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THE SIXTEENTH-CENTURY ITALIAN DUEL

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THE SIXTEENTH-CENTURY ITALIAN DUEL

A Study in Renaissance Social History

By
FREDERICK R. BRYSON, PH.D.

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TO MY WIFE

Sedulo curavi humanas actiones non ridere, non lugere, neque detestari, sed intelligere.—Spinoza, *Tractatus politicus*, cap. i.

PREFACE*

THE present work is concerned chiefly with one institution, in one century, and in one country. The theories as to that institution, the duel, seem to have had their greatest development at that time and in that place, sixteenth-century Italy. This was due not only to the propensity of Italians to discuss theories such as those about honor† but also to the fact that during the period in question Italy was the country in which actual duels were most frequent. Comparatively rare among the nations of the North, they were common in both Italy and Spain but less so in at least a part of the latter country because of greater restriction by the laws.[1]

Of the cause of the propensity to duels, the writers offered several explanations. One imputed it to ignorance,[2] and another said that the princes, being soldiers rather than statesmen, were inclined to permit their subjects to fight.[3] But neither of these statements explains the preponderance of duels in Italy as compared with other countries. Perhaps the true reason was that stated by the eighteenth-century writer Maffei, when he noted that on the subject of the duel Italian writers had published the greatest number of books.[4]‡

The study of the Italian duel in the sixteenth century is of considerable importance. In the first place, as one of the out-

* A number of books cited in this study are in the form of dialogues: such are those of Francesco Ferretti, Giraldi (*Dialoghi*), Guazzo, Mantova (*Dialogo*), Muzio (*Il Gentilhuomo*), G. B. Possevino, Romei, Tasso (*Il Forno*), Terzo, Toralto, Urrea, Viggiani, and Zanchus. The ideas, therefore, were not necessarily those of the authors themselves, but at any rate they expressed contemporary opinions.

For the reference numerals of the text see the References (p. 217). In this, and in the footnotes, the Arabic numerals after names of authors or works indicate the pages.

† F. R. Bryson, *The Point of Honor in Sixteenth-Century Italy* (New York, 1935).

‡ He rejected the theories that the excessive dueling in Italy was caused by the nature of the climate, or by the fact that the population was of mixed blood; he noted that the duel of honor, the usual type in the sixteenth century, did not flourish among Italians of former generations and that the mixture of races was greater in some other countries (Maffei, 362).

standing features of life in the Renaissance, the duel was discussed in connection with philosophy, law, and religion. The typical duel of the sixteenth century, moreover, that which was based upon the question of honor, involved the problem of what constitutes a gentleman. This subject is still vital, and upon the solutions proposed in the Italian Renaissance are to a considerable extent based the conceptions now held in a large part of the world.*

The duel is interesting, finally, because of its character. It partakes of the nature of war and of competitive athletics, for it displays strength, skill, endurance, and courage. It has features which appeal to both realists and idealists. Those to whom might is essentially right will note in the duel, however visionary may appear its theories, a decision which is practical and final. Those, on the other hand, to whom material matters are of less importance than those of the spirit, will recognize in the duel, however abhorrent it may be on grounds of morality, a subordination of physical comfort, and even of life, to an ideal which is called "honor."

F. R. B.

Little Rock, Arkansas

* Bryson, *op. cit.*, Preface. An example of the value of the study of the duel is the fact that it seems to throw light upon a custom which exists today. Frequently when a man has been accused of lying, he replies by dealing a blow. But, although lying is regarded as a less serious offense than, for example, stealing or murder, yet a man does not ordinarily give a blow to one who has accused him of a crime, and also, as was noted by Italian writers in the sixteenth century, it is obvious that with regard to one's truthfulness a blow gives no proof. Perhaps the explanation of the blow is as follows: Under the code of the duel, giving the lie, which was the usual provocation to a challenge, had an effect similar to that of the parliamentary custom of closing debate by "calling for the previous question"; the former procedure put a stop to all recriminations, and the parties might have recourse to the duel as revealing the judgment of God. As for the blow, it may be now merely a conventional substitute for the duel.

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INTRODUCTION

THE Latin word *duellum*, from which was derived the Italian *duello*, had originally the same meaning as *bellum* ("war").* The first appearance of *duellum* in the sense of "duel" was, so far as is known, in the *Glossary* of Plazidus of the sixth century: *Duellum enim dicitur quasi duorum bellum.* With this signification, it appears that the literary use of the word began in the tenth century and that its legal use first occurred in a law of Bishop Burchard of Worms, in the eleventh century: *Ipse contra eum duello pugnaturus negatam pecuniam acquirat, si voluerit.*[1]

The duel was defined as a physical combat deliberately planned with the mutual consent of the two parties and fought for vindication from an alleged offense, for glory, or because of excessive hatred.† It differs from an ordinary fight in that the consent is not only on the side of the aggressor but on both sides.[2] In general, there must be agreement as to the weapons, the place, and the time; but the duel may occur on the impulse of the moment, provided that there is the intention to give and to accept a challenge and to fight with specified weapons.[3] The fact that the contest is physical, moreover, causes an essential distinction between the duel and a suit at law.[4] On the whole, furthermore, the duel is an art; but, in so far as it takes its rules from ethics, it was regarded as a science.[5]

In its evolution‡ there have been three main types, which may be called the "state" duel, the "judicial" duel, and the "duel of

* Bernardi, however, derived the Italian *duello* from the dual number in Greek; and the Latin *duellum*, according to Giulio Ferretti, came from the name of Duellona, whom the ancients believed to be a sister of Mars; another sister, he added, was Bellona, from whose name was derived *bellum*. Maffei, remarking that Baldo (fourteenth century) and certain others had erred in supposing *duellum* to mean "duel," said that it signified "war" and that from it was derived *bellum* (Bernardi, 21; G. Ferretti, 309; Maffei, 281).

† For further definitions, and also etymology, see Levi, 1–3.

‡ For theories of the origin of the duel see Appen. I.

honor." These have shown considerable overlapping, but perhaps, on the whole, the state duel may be regarded as ancient, the judicial duel as medieval, and the duel of honor as modern.

The state duel was that in which two or more combatants fought as representatives of opposing armies or factions. Of this type was the contest of David and Goliath. Other duels supposed to have taken place in ancient times were those of Hector and Achilles and of the Horatii and the Curii.[6] Among the early Germans, moreover, duels between national champions and captive enemies were used as omens of the victory or defeat of the tribe.* A later example of the state duel, which also included certain elements of the duel of honor, was the proposed combat, in 1283, between two cousins, Peter III, king of Aragon, and Charles, count of Anjou, brother of Louis IX of France.†

The second type was the judicial duel, the function of which was to reveal, in the absence of legal proof, the guilt or innocence of one accused of a crime. If the duel resulted in his defeat, but he survived, he was usually punished by the amputation of a hand, or by execution. But if he was the victor, his opponent, who was his accuser, was generally punished as a slanderer, or received the penalty which the other party would have incurred if he had been defeated. In either case, however, the decision as to the punishment perhaps rested with those in authority.[7]‡

So far as is known, the oldest enactment regarding this kind of duel was made in the law of the Burgundian King Gundebald in the year 501.[8] This provided for the duel in case the accused persisted in his denial under oath, and the accuser demanded the proof by arms.[9]

With regard to the judicial duel in Italy, there seems to be

* Tacitus, *Germania*, chap. x.

† Appen. III.

‡ But there were many variations. The Arabian traveler Don Ibn Dost told of the judicial duel of the tenth century, as it was practiced by the Slavs. It was used if the parties were not satisfied with the decision of the ruler. The loser of the duel must suffer whatever conditions were desired by the winner. In Bohemia, in the fourteenth century, the law required the winner to cut off his opponent's head and carry it to the judge (*Grande encyc.*, XV, 1; Coelli, 7).

general agreement that it was introduced by the Lombards, in the reign of their King Aliprand.[10] It appears to have been instituted for the following reasons: not all doubtful cases were covered by the laws; as in the case of the state duel, a fight between two prevented the participation of more; and the former acceptance of an oath as disproof of a crime was a temptation to commit perjury.[11]

The first Italian judicial duel of which there is a record was fought at Pavia and was caused by an accusation against the Lombard Queen Gundiperga.* According to one account, a certain Adaluf, whose attentions had been repelled by Gundiperga, charged her with seeking to poison her husband, King Rodoald,† in order to marry her lover. Clotaire II, king of the Franks (d. 628), having heard of the matter, sent word that they should decide the case by means of a duel between the queen's accuser and someone who should appear as her champion. Her cousin (or according to another version, her servant) thereupon fought Adaluf, compelled him to confess himself to be a liar, and then killed him and inherited his property.[12]

Previous to the seventh century, the Lombards had, so far as is known, no written laws;[13] at any rate, the codification of their customs, which included the judicial duel, was first promulgated by their King Rothari, at Pavia, in 643. The fact that this code was written in Latin perhaps indicates that it was intended to be valid over all Italy.[14]

Although the law permitted the judicial duel without any evidence of the alleged crime, some of the Lombard rulers introduced greater moderation. Thus with regard to a woman accused by her husband of adultery, Grimoald (668) decreed that a duel should take place only when the accusation had been due to the husband's malignancy. Liutprand (712–44), although he added to the number of causes for the duel the case of a master who was held responsible for a theft by his servant, lessened the penalties incurred by the party who was defeated. He also decreed that if upon one whom a duel had convicted of

* She was mentioned by the chronicler Fredegar in 626 (Gelli, *Duelli celebri*, 2).

† But it appears that his name was "Ariwald."

theft there was imposed a fine, and later it was discovered that the crime had been committed by another, the former party should be reimbursed; and he declared that, if a son, asserting that his father had been poisoned, defeated in a duel the supposed murderer, the latter should not, as formerly, suffer the confiscation of all his property but should be assessed a limited fine.[15]

In 774 the conquest by Charlemagne ended the rule of the Lombards, but in the course of time their laws concerning the judicial duel were confirmed and enlarged. Charlemagne himself decreed it for the case of an accusation of perjury.[16] But he mitigated the punishment of the loser, who was not, as formerly, to receive a perjurer's punishment as decreed by law; namely, the amputation of a hand. The Emperor Louis II (825–75) ordained the duel in cases of conflicting testimony: two witnesses should be chosen, one from each side, to meet in combat. In 967 Otto I, disregarding the humane features which had been decreed by some of the kings of the Lombards, reintroduced the duel in its more primitive form.

In 982 Otto II extended the scope of the duel in order to prevent perjury. By the old Lombard custom if a man had attacked the validity of a will, he supported his claim simply by taking oath on the Gospels. This caused so much perjury that Otto I and the pope put the matter before the Council of Ravenna. Since this action brought no result, Otto II ordained that when a document was alleged to have been forged, or made under duress, the question should be decided by a duel. He decreed this also for disputes over the ownership of estates; those arising from the repudiation of a bailment of property of the value of over twenty soldi; the accusation of a theft of more than six soldi; the claim of a servant to be rightfully free; and the causes of the church and other cases where the parties fought not personally but by substitutes (*campioni*). The domain of the duel was still farther extended by Otto III (983–1002).[17] But it was allowed only in those places which had acquired the right by special law or by custom.[18]

In such places, at the zenith of the Middle Ages, the duel was

permitted to all freemen.[19] But there was a notable exception: although it seems that at one time the duel was allowed even between father and son, it was in general prohibited between relatives.[20]

In the course of its evolution the Lombard judicial duel came to include about twenty cases, under the following general classes:

1. Offenses against one's person; such as secret killing, killing during a truce or after the making of peace, parricide, killing a relative to inherit his property, and plotting against one's life. Under the last-mentioned case, a husband accusing his wife of conspiring for his death could fight a duel with her substitute, but a husband could not be forced to fight when accused of killing his wife.

2. Offenses concerning property; as trickery in a sale and arson. In the case of the latter crime, one proceeded against the actual perpetrator but not against the instigator.

3. Offenses against one's reputation; such as calling a man a cuckold, accusing a woman of fornication or witchcraft, or charging adultery against one's own wife, her paramour, or another person. There could not be a duel, however, in the case of a woman's charge of adultery against her husband.

4. Treason against prince or country. This crime was regarded as so serious that the accuser could not, as in other cases, withdraw his complaint; he was compelled to fight.*

Those who belonged to certain classes of society were permitted to be represented by substitutes. In the earlier period of the judicial duel they were members of the principals' families; but later they were men who fought for hire, and they were likely to give their service to the highest bidder. But sometimes their maximum compensation was fixed by law, which might also provide that, if a principal was poor, his substitute should be paid from the public funds and that the substitute should not know until the end of the duel the identity of the principal for

* For the cases included in the Lombard code see: Lignano, *Duello*, 283; Puteo, 59; Castillo, [L 2]v ff.; Alciato, *Duello*, 5v; Muzio, *Duello*, 43v ff.; G. Ferretti, 309v–10; Conrado, 42–42v; Maffei, 147.

whom he fought. The law sometimes required, moreover, that the substitute should be a resident of the district in which the duel took place. If it was to be fought by a substitute on each side, furthermore, there was sometimes an attempt to find men who would be matched fairly because of their physical equality.

At first, defeated substitutes were condemned to death, but by later custom they suffered only the amputation of a hand. Since this was the usual punishment for perjury, it was inflicted because before the duel a substitute was generally required to take an oath that the cause which he supported was just and that in the fight he would do his best; and his defeat indicated that he had been false.[21]*

Among those whom the Lombard law allowed to use substitutes were the ecclesiastics and, in most cases, challenged parties who were superior to their opponents in rank.† But a man waived this privilege and must fight personally if in reply to the challenge, "I will make proof of my person against yours," he simply said, "I will defend myself, "and failed to add the words "either personally or by substitute."[22]

Substitutes were also generally permitted for women; but there are references to judicial duels fought by them personally, and against opponents who were men. Such combats, however, do not appear to have occurred in Italy. In these duels the man stood waist-deep in a pit, the theory being that "a woman is half of a man." His weapon, moreover, was usually a stick, and he might be required to use only his left hand. As for the woman, her customary weapon was also a stick, or a stone wrapped in her cloak. If the man was defeated, he was usually executed; if the loser was the woman, she might be punished by the amputation of a hand, or be put to death by being buried alive.[23]‡

* For further discussion of the question of substitutes see Lignano, *Duello*, 283; Marozzo, 110, 121v; Alciato, *Duello*, 13, 27v; G. Ferretti, 311v.

† A guardian, moreover, although in the Middle Ages he must by birth be of equal rank with his ward, was the latter's substitute in duels. With regard to a father, however, there was difference of opinion as to whether he should fight in place of his son (Pertile, III, 237, 375, 400–401).

‡ A further curious type of duel appears in a law promulgated by Philip IV of France in 1306: a man accused of having slain his master, lord, or other superior was required to fight against a dog. Such a duel is said to have been fought on the island of

Certain details, finally, in the procedure of a judicial duel were intrusted to two seconds (*padrini*). There seems to have been no such persons among the ancients, and it had been difficult to obtain them in the days of knight-errantry.[24]

The period in which the judicial duel most flourished seems to have been between the ninth and twelfth centuries.[25] Among the Lombards, its value had at times been doubted; and their King Liutprand, although admitting his inability to abolish so deep-rooted a custom, had said, in 731, that he was uncertain of the divine judgment in the duel, for many had been defeated unjustly.[26] Charlemagne, however, who overthrew the Lombards, increased the prestige of the duel by demanding entire faith in "the judgment of God."[27]

The definite decline of the judicial duel in Italy dates from about the twelfth century.* But perhaps it began to lose its popularity at the time of the Diet of Verona, presided over by Otto II, in June, 983. Here the lords of Italy asserted that the authority over the duel was their prerogative.[28] By the beginning of the eleventh century, moreover, the duel was prohibited unless it was permitted by the sovereign or a feudal lord. Because it was thus under the control of the nobility, it was abolished by the free cities. The first to take such action seems to have been Genoa in 1056, or Bari in 1132. At any rate, the Italian duel had to a large extent lost its judicial significance by about the beginning of the fourteenth century.[29]† In some

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Notre Dame at Paris in the presence of King Charles V in 1371. According to the narrative, the defendant, a certain Macaire, having been defeated by the dog, was hanged (Millingen, I, 44; Gelli, *Duelli celebri*, 9).

* In France, Louis VII, in a charter granted to the city of Orleans in 1168, eliminated the duel concerning a debt, if the latter amounted to not over five soldi. This has been called the first step of the Middle Ages toward civilization and justice (Gelli, *Il Duello*, 8).

† In France, according to one statement, the judicial duel ended with the combat between Jean Legris and Jacques Carronge in the presence of Charles VI in 1385. After the accused party had lost the duel and had been hanged, it was found that he was innocent (Coelli, 20–21). But it seems that the judicial duel in France did not become extinct until toward the end of the fifteenth century. A modern writer says that it was abolished because it had come to be opposed by the people, the church, and the monarchy; by the people because their interests had become more mercantile, by the church because it regarded the duel as tempting God, and by the monarchy because from the duel there was no appeal to the king's courts (Gierens, 191–92).

cities, however, the judicial duel lasted until the sixteenth century, but during this latter period it blended with the duel of honor.[30]*

That the Lombard dueling-law survived so long was due, at least partly, to its glosses by Carlo di Tocco of Benevento, famous as a jurist at Bologna in the thirteenth century. He, unlike the Lombard King Liutprand, defended the duel. He also enlarged its scope; for example, he extended from five years to thirty the time within which recourse might be had to the duel to contest the possession of property alleged to be held illegally.[31]†

This long survival of the Lombard law seems to have caused some writers to regard the duel as more or less legal even in the sixteenth century. In fact, after the overthrow of the Lombards, Italy had two conflicting legal codes: "The Carolingian kings expressly recognized the Roman law, and allowed all who would be counted Romans to 'profess' it."[32] By the concordat between Pope Eugene II and the Emperor Louis the Pious in 824, the people were to be judged "according to the law (Roman, Salic, or Lombard) they had elected to live under."[33] In the ninth and tenth centuries "anything or everything written may

* If one may accept as historic the account of Bandello, the following judicial duel took place about 1450:

The Count of Pancalieri accused the Duchess of Savoy of having been an unfaithful wife, and the Signor di Mandozza offered himself as her champion. In the midst of the field was erected a gallows, and near it a pyre. The duchess came in a wagon; and, since she was under an accusation, she must mount a platform and there await the proof of her innocence. Mandozza overthrew his adversary and made him confess his falsehood, whereupon Pancalieri was hanged on the gallows and his body burned on the pyre, which was lighted by the duchess (Bandello, II, 44).

† Some of his further additions to the code were: one calling another a cuckold must give the name of the man who made him so; and, although a man cannot be a wolf, to call him one is a great insult (cf. Bryson, 66–67). An example of Carlo's logic is his explanation of the fact that one was fined only three soldi for striking another with the fist and six soldi for slapping. He said that this was because the fist leaves only one mark, whereas the slap leaves five (cf. the French *giroflée à cinq feuilles*); because the slap is in the face; or because it is heard from a greater distance (Maffei, 164–66).

This distinction survived in the sixteenth century. Benvenuto Cellini, having knocked senseless a certain Gherardo Guasconti by striking him on the temple with his fist, declared, when brought before the magistrates, that he had given only a slap. At this they were amused, for the penalty for slapping was a fine of twenty-five crowns, whereas the fine for giving a blow with the fist was little or nothing (Cellini, *Vita*, I, 16).

be held to be the law in Italy," but in the latter century a large part of the country was dominated by Roman law. When, however, glossed collections of Lombard and Frankish laws were made between 1019 and 1037, their commentators were of two factions: the "Romanists" held that Roman law had a general supplementary force and that Rothari himself intended that his edict should be interpreted by this law; whereas the "Lombardists" insisted that Lombard law was sufficient.[34] The latter persisted, moreover, in spite of the revival of Roman law which followed the Emperor Lothair II's rediscovery, at the capture of Amalfi in 1130, of the *Pandects* of Justinian.[35] The constitution of the Emperor Frederick II (1231), traditionally ascribed to Pier delle Vigne, was derived partly from Roman law;[36] but Frederick intimated that in his kingdom the preference was to be given to the law of the Lombards.[37] He therefore decreed the judicial duel. Since, however, he considered it not a true proof but a kind of divination, he limited it (1237): it was to be used only in accusations of treason, or of poisoning or other secret homicide.[38]* The famous lawyer Bartolo (fourteenth century) considered the Roman law and the Lombard law to be of equal validity,[39] and in South Italy some invoked Frankish and Lombard law as late as 1418.[40] Such persons, unlike those who were governed by Roman law, were in prescribed cases obliged to engage in the duel.[41]

Although some features of the Lombard duel persisted, at least theoretically, into the sixteenth century, others were changed or abolished. Among the former class were the presence of seconds (*padrini*),[42] the precautions against the use of magic herbs or other charms,[43] and the duelist's oath that he believed in the justice of his cause. But under the Lombard law this oath had been required only of the challenger.[44] Among other features, likewise, not followed in the sixteenth century were these: the day within which the duel must be fought and concluded was a period of twenty-four hours; the choice of the

* The municipal law of Messina, however, extended the duel to all cases in which the penalty for the offense was the loss of life or of limb. Since this municipal law expressly referred to a royal ordinance, perhaps there has been lost a revision of the law of Frederick, which had been thus expanded (Fisher, II, 187 [n. 6], 188).

dueling-field was given to the challenger; and the weapons were in the earlier period of the judicial duel chosen by the contestants' agreement, but later by either the challenger or the civil authority. The arms, moreover, which had originally been unrestricted, were limited by Charlemagne; he decreed that they should be only the shield and the club. In duels resulting from accusations of lèse majesté, however, the weapon was the sword.[45]

Certain other features, which were also discussed in connection with the duel in the sixteenth century, were introduced by the law of the Emperor Frederick II. The age of the contestants must be not less than twenty-five or more than sixty.[46] The choice of weapons and judge and the authority to fix the date of the duel were given to the party who was challenged.[47] The oath as to belief that one's cause was just was required not of the challenger alone, as in Lombard law, but of both parties.[48] If the challenged party was handicapped by a physical defect, one must seek to produce equality; if this party had but one eye, for example, his opponent must fight with an eye covered.[49]*

The third and last of the types of combat which have been noted, the duel of honor, was like the judicial duel in that it had the function of proving or disproving an accusation. But, whereas the judicial duel might be fought over a question of property, the duel of honor was concerned only with personal offenses which implied insults.[50]

Many duels, however, contained features of more than one of the three main types. Thus, the state duel resembled the judicial duel and the early duel of honor when it was regarded as the judgment of God. This was true of the duel of David and Goliath.[51] The question of an accusation of perfidy, moreover, which was cause for a duel of honor, was introduced into the proposed state duel between Charles of Anjou and Peter of Aragon. The judicial duel resembled the state duel in that it could limit the contest to two persons instead of allowing it to

* For further discussion of laws such as those concerning the judicial duel see Montesquieu, Book XXVIII.

involve others, and it resembled the duel of honor when the alleged offense was an insult. The duel of honor partook of the nature of the state duel when the enmity was due to diversity of race or faction; and it resembled the judicial duel when not infrequently in connection with personal insult there was accusation of crime. From the judicial duel the duel of honor also took some of its terminology. For example, the legal words *attore* ("plaintiff") and *reo* ("defendant"), with the respective meanings "challenger" and "challenged," had been used with regard to the judicial duel before the twelfth century.[52]

Such details, in so far as they associate the judicial duel with the duel of honor, reveal the importance of the Lombard laws in the study of the duel of the sixteenth century. Certain writers of that period continually cited them long after dueling had become illegal. These men seem to have done so either because they sought to give to these combats a coloring of legality or because the difficulty in distinguishing between the two types of duel frequently resulted in confusion. With regard to certain passages in the present study, therefore, the reader may suspect unannounced discussions of the judicial duel. This is especially likely, moreover, if a writer noted that an offense which was the cause of a duel was of the kind which might be punished by the law. Since, however, the transition from the one type of duel to the other was doubtless gradual, it is natural to suppose that, at least in the early days of the duel of honor, its chief difference from its predecessor was only the fact that the later duel was illegal; in the two the procedure appears to have been much the same.

Perhaps the first specific reference to the duel of honor was made in 1169. On that occasion some citizens of Genoa stated that their differences could not be settled without a duel "salvo l'onore."[53]

But duels more or less of this type had already appeared in the form of combats ascribed to the knights-errant. The first of these adventurers are said to have been Scandinavians.[54] The frequency of the duels of knights-errant was sometimes attributed to the anarchy following Charlemagne's defeat of the

Lombards. One writer said that the warlike spirit took the form of the duel just as the carcasses of horses produce worms. As for the lords, being unable to control their subjects, they allowed them to kill one another, and thus increased their own power.[55]

But the accounts of the duels of knights-errant are doubtless largely legendary. According to one of these narratives, Galeazzo of Mantua, having been chosen as a dancing-partner by Queen Joan of Naples, was so grateful for the honor that he vowed to conquer two knights and give them to her as a present. Roaming over Burgundy, Brittany, and England, within a year he secured his captives; the queen thereupon received them kindly and gave them their freedom.[56] There were also stories about Sordello of Mantua, who won many duels in Italy and at Paris; Emanuel of Seville, who challenged all the most valiant men of Mauritania; and another Spaniard, Suero (or "Severo"), who at the time of the jubilee of St. James of Compostella, posted himself at a bridge, and to all who wished to pass he gave the choice of fighting him or surrendering; he thus captured or defeated many from France, Germany, and England.[57]

Another predecessor of the sixteenth-century duel of honor was the tournament. This is said to have been instituted by Godefroi de Preuilly in France, about the middle of the eleventh century,[58] but it did not attain to its greatest development until the fourteenth. Perhaps its popularity at that time was due to the fact that the decline of the judicial duel had left unsatisfied the enthusiasm for public combats. Among the notable tournaments in Italy was that in the Coliseum at Rome, in 1332, which resulted in the death of eighteen knights; and the one which took place in St. Mark's Square in Venice, in 1364, and was witnessed by Petrarch. Tournaments sometimes partook of the nature of the state duel, moreover, when they were fought because of the rivalry between cities.[59]

The fights of knights-errant and the tournaments, however, hardly belong to the subject of the duel. The knights-errant, when not merely legendary, often fought too capriciously to be subject to a dueling-code; and the tournaments were, at least theoretically, merely sports. The fact, however, that both of

these forms of combat were sometimes based upon enmity* and that, unlike the judicial duel, they were followed by no legal judgment made them ancestors of the duel of honor.[60]

The latter had, in turn, its evolution; as the successor of the judicial duel and of the jousts and tournaments, it was at first public, and then, as the laws of church and of state against it grew more severe, it was supposed to be private.

From the point of view of its motive, the duel of honor was fought because of hatred, in order to acquire fame, or for the proof or disproof of an alleged offense which implied dishonor. The duel which was based on mere hatred, however, appears to have had, at any rate in the sixteenth century, few defenders. At least one writer of that period, however, seems to have regarded hatred as inherent in the duel, for he said that the latter was introduced by natural law because of natural hatred.[61]† As for the duel fought for glory, the fourteenth-century authority Lignano held it to be less objectionable. He stated that its purpose was not to destroy but to conquer, and the acts of men are judged according to their purpose; that it was closer to natural equity, on which were founded the prohibitions and permissions of the civil law; and that this type of duel was not entirely injurious, for it gave to the people pleasure and recreation. Yet it was generally held that neither the duel based on hatred nor the duel fought for glory was permissible. According to Lignano himself, they were prohibited by natural law, which gives equity.[62]

In the sixteenth century the matter was discussed by Antonio Possevino. As to hatred, he pointed out that the purpose of the duel was not vengeance, for this could be obtained without risking one's life. As for the duel fought for glory, he made an

* There is mention of a tournament fought, because of enmity between Hessian and Franconian knights, at Darmstadt in 1403. Such tournaments had been held in France, moreover, since the middle of the fourteenth century. For these there was a challenge, which if verbal was called a *défi* and if written was called a *cartel*. The conditions of the fight were decided upon by the two parties, who sometimes sought the permission of the king, but sometimes did not. In 1532, however, Francis I forbade these fights unless they received his permission (Gierens, 191–92).

† Within recent years, Baron Levi has suggested that, when mutual hatred is incurable, the duel may perhaps be the only solution (Levi and Gelli, Preface, p. xliii).

analogy with the legal justification of self-defense; the purpose is not acquisition but conservation. So the function of the duel was not to acquire honor but to keep it or regain it; that is, to free a man from others' suspicion of his conduct, or to maintain by valor something which he had done, if another denied it and provoked him to combat.[63]

The theorists also mentioned two other types of duel. One was, as sometimes in the case of tournaments, a formal combat between groups. The other, which might be fought between either groups or individuals, and which flourished especially at Naples, was the informal duel *alla macchia*. This was one which was fought in some out-of-the-way spot, with no judge and with no rules. The challenger seems to have chosen both the field and the type of weapon, but of those of the required type each party used his own. This kind of duel was not always caused by a spirit of lawlessness; sometimes one resorted to it because the formal duel was expensive, or because a lord refused to grant a field.[64]*

These two types of duel, however, received from the writers only scant notice. The fight between groups was difficult to judge; if one side had both winners and losers, for example, the result might be indecisive. As for the combat *alla macchia*, the authorities on the code of honor usually condemned it as being unethical. Generally speaking, then, there remained for serious consideration by the writers of the sixteenth century only the formal duel between two individuals for the proof or disproof of an alleged offense which reflected upon one's honor.

In the course of the foregoing discussion the duel has been considered in its relation to the law; it is important to note also how it was regarded by the church. As for the judicial duel, some ecclesiastics openly or tacitly indorsed it. Civil rulers, moreover, granted to certain cities charters in which the power to decide cases according to the results of duels was conferred upon the bishop,[65] and the confiscated property of those who were defeated in duels was sometimes adjudged to abbots or

* For examples of duels *alla macchia*, one of which was fought by groups, see Appen. IV.

priors.[66]* Duels were also fought to decide questions involving the church itself,† and there were such combats even between ecclesiastics.‡ That the duel was sometimes permissible, furthermore, was held by certain authorities on canon law, such as the Abbot Regino of Prüm (d. 915), Bishop Ivo of Chartres (1040–1116), and Bishop Burchard of Worms (eleventh century).[67]

To all types of duel, however, the church was in fact opposed. At the time when the judicial duel was decreed as legal by the Burgundian King Gundebald in 501, a protest was made to him by St. Avitus, the archbishop of Vienne and primate of Burgundy; and in 840 this legal sanction of the duel was censured in two letters written to King Louis I by Archbishop Agobard of Lyons.[68] Active opposition by the church began with the Council of Valence in 855.[69] This was presided over by the bishops of Lyons, Vienne, and Arles. It decreed that, according to the old ecclesiastical custom, one who killed or seriously wounded another in a duel should be cut off from the church, and compelled to do penance as a murderer; the party who was killed should be buried without song or prayer, as a suicide; and he should not be remembered in the sacrifice of the Mass.[70]

* There are references to at least one case in which ecclesiastics were given possession of the loser himself. The story is that, after a victorious duelist had, as a penance, presented his opponent to the canons of St. Peter's at Rome, they kept the captive as their prisoner for a long time (Brantôme, VI, 251; Maffei, 180).

† At the Synod of Burgos two knights fought to decide which liturgy should be used, the Mozarabic or the Roman (Gierens, 298). In Italy there was a duel in the year 900 at Pavia over the question of the proprietary rights of the Monastery of the Savior (Coelli, *Il Duello*, 10). Bishop Liutprand of Cremona was reported to have had in his train a duelist whose function was to corroborate the truth of the bishop's statements (Gierens, 181). In France a duel was fought in 1064 on account of litigation between the monks of Saint-Serge and those of Saint-Aubin d'Angers; one about 1078 in which the parties to the case were the abbey of Saint-Père de Chartres and the heirs of a certain Robert; and one in 1098 because the abbey of Marmoutiers was in litigation against the abbeys of Sainte-Croix de Talmont and Sainte-Marie d'Angles (*Grande encyc.*, XV, 2).

‡ An example was the duel in France between the cleric Regnaud Chesnel and the abbot of Vandome ("Vendome"?) (Russo-Ajello, 63), and another took place at the Council of Lillebonne in Normandy in 1080 (Gierens, 298). They were sometimes fought by members of religious orders, abbots, and even bishops. In England and Scotland, for example, these men often engaged in duels because of compulsion by legal judges. The latter were therefore threatened with excommunication by Innocent II (1130–43) (*Encic. giurid. ital.*, 1137; Gierens, 303).

In fact, although the judicial duel, like the trial by "ordeal," was the judgment of God, according to the belief of the people and a part of the clergy, yet the principal ecclesiastical authorities, and especially the popes, regarded this as superstition; but for a long time they tolerated the duel because of public opinion. The popes who preceded Nicholas I (858–67) observed the principle that against certain evils, which included the duel, they would make no severe decrees so long as the people had not come to realize that these customs were sinful.[71]* Although the popes opposed the duel in specific cases, it appears that they did not attack it as an institution until the twelfth century.[72]

But thenceforward a series of papal denunciations were directed at duels, especially those which involved clerics, and there was also ecclesiastical prohibition of dangerous jousts and tournaments. As for clerics, it seems that they fought no duels after the prohibition by Innocent IV (1243–54). Jousts and tournaments which implied risk of life had been prohibited by the second Lateran Council in 1139, and Pope Gregory IX (1227–41) decreed that those who were killed in these tournaments should be deprived of church burial.[73]

As to the proposed combat between Charles of Anjou and Peter of Aragon in 1283, the most important feature, with regard to the history of dueling, is the fact that the Italian writers of the sixteenth century seem to have been unanimous in the belief, apparently based upon the statement of Giovanni Villani (d. 1348),† that consent to the duel was given by the pope. The defenders of dueling gladly seized upon this supposed instance of its approval by the church. One opinion, for example, was that, since the two rivals swore that the loser would leave Sicily and thus put an end to the dissension, the attitude of the pope should be praised and he should be imitated by others; and

* As for Nicholas himself, although it is said that in 858 he pronounced the duel to be legitimate and just, at any rate he did not do so in the case of Queen Theutberga. When her husband, Lothair II, king of Lorraine, who had accused her of unfaithfulness, wished to decide the matter by a duel between substitutes, the pope protested to Charles II, king of France, in a letter in which he attacked duels as being a manner of tempting God (Russo-Ajello, 64; *Cath. Encyc.*, V, 184; *Encyc. Brit.*, VIII, 639; Gierens, 301–2).

† *Cronica universale* or *Historie Fiorentine* (Venice, 1537), Book VII.

this case showed that, although duels were repugnant to divine law, they were sometimes permitted for the sake of peace and the public welfare.[74]

There are now known, however, two letters from the pope which show that he made every effort to prevent this duel: one was a prohibition sent to Charles and the other was a message to King Edward I of England, exhorting him to do everything possible to keep the fight from taking place in his dominions. In fact, the sixteenth-century belief that the dueling-field was granted by King Edward* was subsequently shown to be erroneous, when there came to light two letters from him: one to Charles and the other to the latter's son, the Prince of Salerno. In both of these communications Edward absolutely prohibited this duel in territory subject to England.[75]

The opposition of popes, moreover, prevented certain other proposed duels between princes. Such was the action of John XXII, in 1316, with regard to the enmity between Frederick I of Aragon and Robert of Naples, the grandson of Charles of Anjou.[76] In 1425 Martin V made effective opposition to a duel between Humphrey, duke of Gloucester, and Philip, duke of Burgundy. In this connection the pope declared that duels were the result of anger, or of unbridled desire for human honor; that they did not give an honorable defense of good reputation; and that the loser was often in the right.[77]

Yet the church did not eradicate dueling. For this fact there were several causes. In the first place, the church failed to prevent the duel from supplanting the older custom of taking the oath upon the Gospels; partly because the latter act had come to be considered as a cause of perjury and was also regarded by the lords as putting them on a level with their vassals. There were two other reasons, moreover, which were fundamental. Yet these were essentially opposed to each other: one was based upon regard for religion; the other, upon indifference to it. The former reason was that many men, in spite of the frequent defeat of the innocent and the fact that the church regarded the

* Brantôme, e.g., cited an authority to the effect that the duel of Charles and Alfonso (*sic*) received the king's permission (Brantôme, VI, 453).

duel as tempting God, yet believed that the just cause generally obtained victory by God's aid. The other reason was that between the thirteenth and the sixteenth centuries religion lost much of its influence and was overshadowed by so-called knightly honor.[78]

As for the church, it appears that the popes and the councils never regarded the duel with favor.* Concerning evils in general, the attitude of the church was summarized by Gregory the Great (590–604): addressing the missionary St. Augustine at the time of the latter's journey to England, the pope said that some evils the church zealously corrects; others it patiently tolerates; and still others it deliberately overlooks, but in such a manner that it often restricts and even destroys them.[79]

* Between the years 769 and 772 the synods of Dingolfing and Neuching, although they recognized the duel as permitted by secular law, gave it no approval. The former body held that an accused party should rather seek reconciliation; and the Synod of Neuching declared that, when duels took place, provision should be made against the use of devilish magic (Gierens, 298).

PART I

THE TECHNIQUE OF THE DUEL

CHAPTER I

THE CHALLENGE

SINCE insults* between men who were previously regarded as honorable† might sometimes be canceled by means of litigation, arbitration, or direct negotiation between the principals,‡ the writers agreed that only as a last resort should one have recourse to the duel. They held that, since it was worse to fight unnecessarily than to avoid a duel which was justifiable, one should first seek the restoration of honor by means that were peaceable. An offender could apologize, for example; and, according to some, this indicated less fear than did an apology given later while a duel was in progress.[1]

A challenge to a duel, moreover, was a summons to give proof; hence a duel was unnecessary if proof was already at hand. There should be no duel, for example, over a true accusation that one was of illegitimate birth. § The fact which was to be proved by a duel was that some man had lost his honor, and this quality was generally regarded only as a matter of reputation;‖ so dishonor was always evident and hence required no proof.[2] The logical conclusion seems to be that duels were always unnecessary.

This was sometimes the case, at any rate, even when a man had been given the lie (the *mentita*).¶ If this had occurred, for example, because he had made an accusation which he believed to be true, and if after having learned that it was false he refused to retract, then, since his fault was evident, the stain given by the *mentita* could not be effaced by a duel.[3] Again, if one without sufficient evidence asserted, "You said so-and-so; you

* Bryson, chap. iii.

† *Ibid.*, chap. ii.

‡ *Ibid.*, chap. v. In France, in 1508, when Just de Tournon had insulted De Mony by slapping him, Louis XII forced the offender to apologize. The king also inflicted upon him a three-year banishment (Coelli, 22).

§ Cf. Bryson, 25, 34.

‖ *Ibid.*, chap. i.

¶ *Ibid.*, chap. iv.

lied," the second party could reply, "Since I did not say it, you lie."* If, however, the first speaker thereupon proved that the second had made the statement attributed to him, the second speaker could not prove by a duel that his statement was true, for his false denial of having said it gave the presumption that he had also lied as to what he had said.[4] One might avoid being challenged, moreover, if to his *mentita* he added the words "not with the purpose of accepting the duel."[5] Still another reason why a *mentita* ought not necessarily lead to a challenge was the fact that the primary cause for a duel was not the *mentita* but the offense for which it was given.[6]

Since the purpose of a duel was to determine whether an insult of word had stated the truth, or whether an insult of act had been justifiable, the duel was evidently unnecessary when the matter was incapable of proof. This was the case, for example, if one asserted that another was not a *uomo da bene*.[7]† Even when approximate proof was possible, furthermore, some held that the proof obtained by the duel was the least convincing.[8]

Since, moreover, a duel was the means by which a man who had become inferior to his opponent by receiving an insult‡ sought to restore equality, a duel might be unnecessary when insults had been mutual. For example, if a man, having denied an accusation, made another one against his accuser, it was doubtful whether the latter could give a challenge for the new insult. Some held that he could do so if his opponent accused him of a more serious offense than that which was the subject of his own accusation. According to one opinion, however, there could be no challenge for the second insult unless the first accuser confessed that his accusation had been wrong, or he asserted that by means of a duel he would simultaneously prove his opponent's guilt as to the first accusation and his own innocence as to the second one. But this procedure was objectionable in that it sought by one duel to prove two facts. Supposing that one of these was true and the other was not, the dilemma

* *Ibid.*, 71.

† *Ibid.*, 22–24, 34–35.

‡ *Ibid.*, 47–48, 84–85.

was like that of Jupiter when he granted to a hare the power to outrun any dog but forgot that he had granted to Cerberus the power to catch any hare. The moral was that men should fight for only one cause at a time.[9] At any rate, a duel was unnecessary if, for example, one who had assaulted another with a sword had received in return blows with a club,[10] or if insults of word were "compensated." This term meant that the second insult was merely a repetition of the first, as when one who had been given an opprobrious epithet replied, "You are one yourself."

There was occasion for a duel, however, if insults were "doubled"; that is, if the latter not only repeated the former but also made an addition. One who had been called a forger, for example, might say that his accuser was both a forger and a murderer.[11]*

But a duel was not always obligatory even when an offense had been grave, such as an insult given with unfair advantage. This might have been done publicly, or it might not be generally known. In the former case, although the offense was worse, it did not need to be proved. A duel was unnecessary also because the offended party, having been taken at a disadvantage, had not lost honor, for he had given no reason to doubt his courage. If, on the other hand, the offense was not generally known, it was necessary, according to the advocates of the duel, to give a challenge; but, when it was asserted that the offense had been given fairly, the burden of proof rested upon the offender.[12]

There was, in fact, difference of opinion as to when a duel was permissible. On the one hand, it might properly result only if an accusation concerned not property but personal character, if the matter had not been brought before a court of law, and if proof could not be made by witnesses.† On the other hand, public opinion permitted the duel when in the absence of proof a man of honor was charged with an offense which in law would incur the penalty of death or public infamy. Even a man who

* *Ibid.*, 49, 52.

† These conditions had been stated by Baldo, who said, furthermore, that the accusation must be based on at least a suspicion (Castillo, fol. M).

admitted the alleged offense, moreover, could fight a duel to maintain that his action had been justifiable, as when he confessed to a homicide but asserted the excuse of self-defense.[13] At any rate, a duel was supposed to manifest the two cardinal knightly virtues, since by means of it valor defended justice.[14]*

The challenge was usually provoked by a *mentita*. Some held, to be sure, that one accused of something dishonorable might, instead of giving the lie, challenge the accuser; but, since the one challenged had the choice of arms, it was customary for the accused party to give the lie and await a challenge.[15] The accuser's obligation to give this challenge, moreover, could not be shifted upon his opponent by answering his *mentita* with a blow.[16]† Sometimes, however, after making an accusation, one might also give a challenge without waiting to be given the lie. This might occur, for example, in the following case of an accusation of treason; if the accuser had been asked by the accused to participate in his crime but had refused and had revealed the matter not from a motive that was unworthy but from necessity or for the sake of prince, country, parents, etc., then the accuser must issue a challenge.[17]

A special case of a challenge resulting from a *mentita* was that in which the latter had been given at the home of a third party. Since this violated the laws of hospitality, it should first be resented by a challenge from the host. If he was anticipated by the one who had received the *mentita*, however, the host gave his challenge later.[18]‡

But a challenge had its "statute of limitations." It could be refused if after the provocation it was not given within a year.[19]

A challenge was generally a matter of considerable formality. In the earlier days of the duel the challenger often sent to his opponent an article called a *pegno* ("pledge"), sometimes accompanied by an explanatory letter. At first the *pegno* was regularly a glove, which symbolized protection for the right hand; but later one might send a ring, a belt, a dagger, etc. If the challenged party refused to accept the *pegno*, the bearer

* Bryson, 7, 11, 13–14, 25, 35–36, 42, 45, 57–58, 60, 88, 94, 101, 105.
† *Ibid.*, 69. ‡ *Ibid.*, 68.

must place it at his feet in the presence of knights or other soldiers.[20]

In the sixteenth century, however, one generally gave challenges only by means of documents. These were of three kinds: the *rogito*, the *manifesto*, and the *cartello*. The *rogito* (a document certified by a notary), used but rarely for challenges, was attested by witnesses. The challenged party replied in the same manner. This form of challenge, although addressed to the public, was directed against a definite person. The *manifesto*, which had considerable vogue, was also a general notification, but it was made without a notary. It was used if the parties were of very unequal rank; if the one for whom it was intended would not accept a challenge addressed to him; or if the challenged party was unknown, as when he had posted an insulting notice without signing his name. As for the *cartello*, it was, strictly speaking, a challenge given to a definite individual and assuring him of safe-conduct to the dueling-field, but the term was more generally used to indicate a written communication of either of the opponents to the other.[21]

The *cartello* should, if possible, be written by the party himself, should contain his seal or that of a notary,[22] and should be brief, modest, and unconditional. To avoid occasion for quibbling, it should give a simple statement of facts, without introduction, proof, or defense. As for its tone, in former times almost all knights in their *cartelli* had covered their opponents with abuse; but it was now held that scurrility showed ill breeding and that a party who did not speak of his opponent respectfully appeared to wish to fight not so much with the sword as with the pen.[23] Since the *cartello* should be unconditional, one should not write, for example, "If you have done so-and-so, you have acted badly, and I challenge you." The proper answer to this would be not a denial of the accusation but a declaration that the accused party would answer when his opponent should proceed according to the code of honor.[24] Another example of a conditional *cartello* would be one that specified the weapons. But in such a case the other party might reject these and yet accept the challenge.[25]

The *cartello* must specify the offense and contain the names and places of origin of the two principals, the address of the writer, the signatures of three reliable witnesses, and the day, month, and year of the document. As for the witnesses, they should be skilled soldiers who could be present at the fight. The date of the *cartello* was important; for, as will appear later, barring some impediment the duel must be arranged within about six months thereafter. Sometimes, however, two challenges were ignored; then the six months began with a third challenge.[26]

If each of the parties sent a challenge to the other, moreover, it was necessary to know which document had the priority. If both were dated the same day and one of them mentioned the hour, the latter was presumed to be the first. If, however, instead of exchanging *cartelli* the parties posted them in public places, the priority of a challenge was due to its coming first to the opponent's notice.[27]

Originally the *cartello*, like the glove or other *pegno*, was delivered to the challenged party by a herald. The latter was not required to bring back an answer.[28] Since a challenge was not confined to the jurisdiction in which the quarrel arose,[29] the herald, if he could not find the challenged party, should, in order to make further search, ask permission of the ruler in whose jurisdiction was the man who was sought; should proclaim the challenge at a gathering-place of knights (at the court, if the absentee was a courtier); and should have attested before a notary the fact that he, the herald, had done his duty.[30] After the ruler had found the *cartello* to be just, and the herald had posted it on the door of the challenged party or in public places, if still the missing man did not appear he was summoned by a crier. If even this was not effective, the challenged party was publicly denounced as recreant;[31] and this was done whether he had disappeared before the arrival of the challenge or afterward. In either case, however, the stigma upon him was removed if he appeared and accepted the challenge within six months.[32]

But the custom of sending a challenge by means of a herald fell into disuse; since the challenged party sometimes mistreated

him, the *cartello* was simply posted in public places. It was considered more elegant to send it to the principal courts frequented by knights.[33]

Although a challenge might be restated in a more correct form, the challenger was not permitted to change the quarrel.* If he asked that this be done, his opponent ought to reply that he would decide as to the request only if the challenger should admit that in the original quarrel he had been in the wrong. Even if he did this, moreover, a second challenge from him could be refused on the ground that by his own admission he was dishonored.[34]

But a challenge might be withdrawn.† Then the challenger should seek to settle the quarrel by proposing arbitration.‡ If this suggestion was not accepted by his opponent, the challenger himself should choose three arbiters, or some other uneven number. Their decision was by vote of the majority.[35]

As for a man who had been challenged, he could follow one of three courses: he might accept the challenge (*contestare la querela*), ignore it, or answer by stating some *eccezione* ("objection"). If he accepted, he usually did so by means of a *cartello*.[36] If he did not reply, he was obliged to fight according to the terms of the challenge.[37] If he raised an objection, this belonged to one of three classes: those that were invalid, those the validity of which was doubtful, and those that were valid.

As for objections which were invalid, the challenged party could not properly make any of the following assertions: that he was not bound to obey his opponent; that he wished to have recourse to the civil law; that the latter prohibited duels; that it is wrong to fight on Sunday; that it is forbidden to a Christian to throw away his life or to take that of another; that, although there should be a judge for the duel and the parties should have

* But Bartolo had said that, even if there was an agreement for a specific duel, the parties could fight for a new cause provided that in making the change there was no fraud (G. Ferretti, 313).

† Lignano had said that this could be done by permission of the proper authority (*De duello*, 284).

‡ Bryson, 80–85.

both offensive and defensive arms, he would not fight in such a place as a room, etc.;[38] that he refused because of his own inferiority or infamy;[39] that he had given his word not to fight a duel (a promise which could rightly be broken);[40] or that a duel would be unjust because of the nature of the quarrel. Although this last-mentioned objection would not make the challenged party actually infamous, yet men might henceforth refuse challenges from him. They might tell him that there can be no pact between a wolf and a lamb, a bear and a hare, a lion and a rabbit, or a high-minded man and a coward; that dead honor cannot be revived; and that dishonor does not need to be proved a second time.[41]

As for cases when the validity of the objection was doubtful, this occurred, for example, when the challenged party said that he did not intend a quarrel or that it did not concern him, or he asserted without evidence that the challenger was of inferior rank. In such cases the question must be submitted to the ruler, or the parties might agree upon one or two arbiters, who must be knights, authorities on the duel, or *illustrissimi** of judgment and experience. If the decision was against the challenged party and he refused to abide by it, the challenger chose a dueling-field, or demanded that his opponent should suggest three fields from which the challenger might choose one. If the challenged party still refused to act, he was regarded as accepting the challenge; his opponent went to the field at the appointed time, and, if the challenged party did not appear, he was declared the loser by default.[42]

An objection was valid, finally, if there was a serious defect in the form of the challenge, or if a party was ineligible. As for the former case, the objection might be concerned with the proposed time, place, or manner of the duel. It should not occur, for example, on a feast day of the church, or in territory of Turks or Saracens. One could also decline an "extraordinary challenge," as for a duel *alla macchia* to be fought at some secluded spot, with whatever arms the parties happened to have and with no judge; or for a duel in a tavern, a kitchen, or a house

* *Ibid.*, 17–18.

of prostitution.* To refuse such challenges was not dishonorable; although a man who fought *alla macchia*, for example, might be considered a good knight, yet one opinion was that he ought to be punished with an ignoble death.[43]

The fact that the challenge must be of correct form was apparent also when a man gave a challenge on the ground of his opponent's treason, and the challenged party had been pardoned by his ruler. In this case, the challenge was proper if it declared that the challenged party had been a traitor in the past; but he could offer a valid objection if the challenger had said, "You *are* a traitor."[44]†

As for ineligibility, the challenged party might raise an objection either as to himself or as to his opponent. The former case arose, for example, if the challenged party was infirm, was in prison, or was already party to another quarrel in which he had received a challenge. His objection became invalid, however, after his impediment ceased. As for the challenger, he was ineligible if, after the beginning of the dissension, he had done some service for his opponent, had associated with him, or had merely saluted him;[45] or if the said challenger had a bad reputation,[46] whether he had become infamous after giving the challenge, or when this was accepted his infamy was not known to his opponent.[47] When alleging the challenger's infamy, however, his opponent must be certain; else he would give an insult for which there could be a new quarrel.[48]

This privilege of raising an objection on the ground of the opponent's infamy belonged only to the party who was challenged. The fact of challenging accepted the opponent as eligible, and the challenger could not later refuse to fight.[49]

The infamy which justified the refusal of a challenge might

* According to Fausto da Longiano, however, one should resort to "private" duels fought in rooms of houses, etc., and the contestants might be unequal in rank, if the quarrels concerned simple matters which did not involve honor. But there should be a judge, and some kind of formal grant of the dueling-place. There was generally agreement as to the arms and as to the fact that each contestant should have a specified number of attendants. As for the party who was defeated, he was not subject to the rigorous penalties which might be imposed upon the loser of a duel which was "public" (Fausto, *Duello*, 39).

† Bryson, 34 n.

be due to membership in a stigmatized social group, or to individual misconduct. As to the former case, one could refuse the challenges of those belonging to classes which were considered to be without honor; that is, men whose vocations were not proper for soldiers and gentlemen, or who were not accepted as witnesses in courts of law. To such groups belonged, for example, innkeepers, usurers,[50] and Jews.* The last-mentioned could not fight duels even if for this purpose they were baptized;† but the prohibition was removed if, in addition to baptism, they restored all their gains from usury and were taught the Christian faith for forty days.[51]

As for men who were infamous because of their personal conduct, they were, for example, soldiers who had abandoned their lord or their standard in battle, thieves, ruffians, assassins, heretics,[52]‡ and those who had been sentenced to punishment by the law. If the defendants had been legally acquitted, but had been condemned by the opinion of knights, they were regarded as only partially infamous.[53] Yet their challenges could probably be refused. This could be done, at any rate, if the challengers were traitors to prince or country; and also, according to the belief of many, if they were excommunicated. As for one who had been a traitor, his challenge could be refused even if he had been pardoned by the king,[54] but one who was challenged because he had called another a traitor could not refuse to fight on the ground that the other's treachery had made him dishonorable.[55] A further cause for refusal was the fact that the challenger was banished; such men were infamous even if they were out of the jurisdiction of those who had banished them.[56]

The challenger could, furthermore, be refused as infamous if he ignored his opponent's valid *eccezioni* and branded him as recreant. The challenged party should then appeal to the civil law to grant him pecuniary damages and should seek from men experienced in the code of knighthood a declaration that the

* *Ibid.*, 24–26.

† But it was considered unlikely that they would accept baptism, since they were stubborn and malignant (Mantova, *Dialogo*, 39).

‡ Bryson, 25–26.

challenger's accusation was false.[57] If the challenger was unable to pay damages and continued to slander the challenged party, it was permissible for the latter to kill him; homicide was justifiable for self-defense, whether of life, property, or reputation. Even when the killing was unnecessary, it should not be punished as murder; but it might be given a lighter penalty, such as temporary banishment.[58]

Besides the previously mentioned infamous groups, others might be debarred from the duel for various reasons. Although men of all degrees from the emperor to the simple gentleman might possess honor, yet it was generally believed that only members of certain classes had the right to fight duels.[59] One must not accept a challenge from a cleric, for example, or from a scholar.* To give such a refusal was called *rifiutare*, whereas to refuse because the challenger lacked honor was termed *ributtare*. The former was a survival of the old civil law; the latter, a creation of the code of honor.[60]

As for clerics, not only were they prohibited from fighting personally but also they could not, as they had been able to do under Lombard law, be represented by substitutes. The arms of clerics, said one of the writers, were tears and prayers.[61] So even after a challenge had been accepted, either party was excused from the duel if he took holy orders, provided that he did not do so fraudulently. A duel could not be fought even by a cleric who was married, or by one who had taken only first orders, both of which classes were exempt from the jurisdiction of secular judges. As will be noted later, moreover, engaging in a duel would cause clerics to be excommunicated.[62]

As for scholars, a writer remarked that for their weapons they might choose books.[63] Another held that philosophers, theologians, and other scholars should neither challenge nor be challenged, for their arms were wisdom and learning. Although if of noble rank they had the power to challenge, they ought not to do so.[64] As for challenging them, no point of honor required a man who was baked by the sun to challenge one who was accustomed to remain in the shade.[65] According to one authority,

* *Ibid.*, 33.

scholars were ineligible for the duel both because of their lack of physical strength and because of the dignity of letters; if challenged, their arms could be reason and the law.[66] So, although some valiant scholars had fought and won duels, it was not honorable to challenge clerics, lawyers, physicians, philosophers, astrologers, grammarians, rhetoricians, etc.; and, if one of them had received a challenge, it was somewhat infamous for him to accept it.[67]

Yet they might engage in the duel under certain circumstances. One opinion was that they could do so if their opponents were neither scholars nor soldiers.[68] Others thought that scholars could neither refuse challenges nor be refused if they made profession of arms[69] and that, although they had no obligation to participate in duels if the ruler objected, permission should be granted if they were skilled in arms and wished to fight.[70]

Naturally, one would refuse challenges from women or children. The former were debarred from the duel because of their natural weakness and for the sake of propriety; and children, like men of defective mind, lacked understanding and hence could not receive insults. So they could not even be represented by substitutes, unless offenses to the children constituted insults to their families.[71]*

Challenges could usually be refused, also, by those temporarily holding public positions.† No one had the right to challenge a magistrate, or any other man who had power to imprison or otherwise to administer justice. At any rate, he could not be challenged because of his official acts. But if he received the challenge in a quarrel that was personal, he must fight the duel after his term of office expired.[72]

Sometimes, moreover, an official must accept a challenge even if his public position was permanent. In this case the manner of

* *Ibid.*, 24, 32–33.

† The French commander, having surrendered Como to the Marquis of Pescara, asserted that the latter had not observed the terms of surrender; hence he challenged the marquis to a duel. But the latter's followers prevented him from accepting because of his position in the service of the emperor (Brantôme, VI, 422–23).

the duel depended upon whether he was superior to his opponent in rank. If so, he could fight by substitute; if not, he must ask his lord's permission to fight personally; and, if this was not granted, the challenge being legitimate and both parties being knights, in order to engage in the duel he must resign his office immediately.[73]

Besides these various refusals which were sometimes obligatory, there were others which were usually regarded as optional, such as those given to challenges from men of illegitimate birth. These, who bore their coats of arms with the bend sinister, were considered inconstant, unfaithful, and hence ill-suited to be soldiers.[74] The civil law, to be sure, made a distinction in holding that those born of "common-law" marriages, which might have been made regular, were in better standing than the issue of unions such as those with harlots; but the challenges of even the former class might be refused unless acceptance was demanded by custom,[75] or the insult had consisted of an accusation of treason. In the latter case, any bastard might either challenge or be challenged; for the crime of treason was so enormous that, in order to permit the duel, the ruler gave a dispensation.[76]

Certain writers, moreover, regarded the illegitimate more indulgently. Although, according to all authorities on the duel, it was forbidden to bastards if they had not been legitimatized, yet they ought to be regarded as eligible if they had received honor in the army.[77] Another reason was that some of them, although not born noble, had become soldiers, princes, kings, and emperors.[78] In fact, the prejudice against the illegitimate was overthrown by custom; since their condition was not their fault, they were allowed, if they were essentially honorable, to be soldiers and hence to fight duels.[79]*

Others the refusal of whose challenges was optional were those who as compared with the challenged parties were of inferior rank.[80] Although there existed a belief that, since all were equal before the law and before God, there was also equality with regard to the duel, and that every private knight reputed to be

* Bryson, 25.

virtuous could fight duels with the great and illustrious, yet it was generally held that these theories must be modified.[81]

The usual requirement for eligibility to the duel was that the parties should be soldiers.[82]* But even one who had served for a long time and had fought in many battles could have his challenge refused by another who had shown conspicuous valor. The latter could accept the challenge if he so desired, however, and he should not refuse it if he had put himself on an equality with the challenger by offending him.[83]

Certain problems arose with regard to differences in military rank. There was the question, for example, whether a private soldier had the right to challenge a captain. This was permissible, according to one opinion, because the duel was a judgment of God, who is no respecter of persons.† But another writer remarked that God desires the preservation of the grades of society.[84] At any rate, the above-mentioned challenge was usually allowed if the officer was not actually engaged in war, and if he belonged to the infantry.[85] Even in time of war, moreover, permission might be granted by the commander; if not, the duel could take place after the war was over.[86]

As for a captain of cavalry, he usually had the title of *illustre*‡ and hence could refuse a duel not only with a private soldier but even with a captain of infantry, unless the latter had very important duties or belonged to a distinguished family.[87] Some of the writers, however, seem to have ignored the distinction between these two branches of the service: they held that, if a captain offended a soldier only to gain glory, this act made them equal;[88] a captain could not refuse the challenge of a common soldier unless the former held permanent authority over vassals;[89] and the challenge was proper also if it was the result of an accusation of a serious crime. But a private soldier could not

* *Ibid.*, 19–20. Brantôme told of a case in Piedmont: because a certain soldier had refused the challenge of a drummer, the latter was permitted by his commander to become a soldier, whereupon the duel took place three months later (Brantôme, VI, 415–16).

† Acts 10: 34–35.

‡ Bryson, 17–18.

challenge the captain of his own company,* or even its sergeant or its standard-bearer.[90]

With the above-mentioned exception as to the pre-eminence of the cavalry, there might ordinarily be a duel between two officers, provided that one of them was not the other's commander. Specific cases, however, must be decided according to the circumstances.[91]†

So the acceptance of a challenge might be obligatory even upon a general. While he was in active service, to be sure, he was not required to fight a duel personally; private interests must always yield to the public welfare. But he could fight by substitute, or personally after he had ceased to be the commander.[92]

Sometimes a man had the privilege of challenging one who was of superior rank to him in civil life. If there was no competent court of law, and the challenged party was accused of such an offense as adultery, treason to the state, or breach of faith to the challenger, a subject might challenge even his own lord, and the latter was not allowed a substitute.[93]

There was difference of opinion, however, as to whether the challenge of a commoner could be refused by a noble.‡ The latter could not do so, said one of the writers, if his opponent was trained in the use of arms. According to another opinion, the challenge could be given by even a rustic. Some held that the challenger could be a common soldier if he had served in the army for ten years. One authority believed that a noble could be challenged by a commoner if the latter was a good man and the noble had great vices, for in this case the noble was the inferior.[94]

* But at Malta, in 1565 or 1566, it was decided that one who had served in the army honorably and continuously for two years could fight a duel with his captain, provided that the soldier did not continue to serve under him (Brantôme, VI, 410).

† An example was a proposed duel between Brantôme's brother, Captain Bourdeille, and one of his former soldiers, a Gascon named Tripaudière. The latter, having become a captain, had left Bourdeille's company. Because of this, Bourdeille challenged him to a duel, to be fought on the bridge over the Po at Turin. But the fight was prevented by the objections of those who pointed out that Bourdeille was of a distinguished family and had been a captain for many years (Brantôme, VI, 413–14).

‡ Bryson, 15–19.

On the other hand, challenges to nobles were restricted. A former soldier living in a rural district, for example, even if he was a knight, could give such a challenge only on condition that he had retired from military service because of old age or infirmity, or had been in the army for twenty years,* and that he neither served men of low social position nor followed a mean occupation on his own account.[95] Theoretically, to be sure, his challenge should be accepted even if he were engaged in agriculture, but farmers were no longer like Cincinnatus.[96] Nobles could refuse also the challenges of notaries, etc.[97]

As to challenges which a nobleman might give, he too was subject to certain limitations. On the one hand, he could not honorably challenge one of low social status, such as a peasant;[98] and, on the other hand, although he could as a rule challenge knights, he did not have this privilege if they belonged to the order of the Golden Fleece or to that of St. Michael;† a member of either of these was regarded as of higher rank than a simple nobleman and could give a challenge to any prince except a king or the emperor.[99] But sometimes the mere fact of noble birth entitled a man to challenge those who, although not born noble, might appear to be of superior rank because of their titles. He might, for example, challenge a baron or a count; their titles, unlike his nobility, were not necessarily permanent.[100] So he could challenge a count palatine;[101] and, if a man's family had been noble for four generations,‡ he could perhaps challenge even a duke.[102]

As for those who possessed both nobility and titles, as a rule they could not be challenged by men who were clearly of inferior rank;[103] and this rank was not accurately indicated by the possession of titles § but by the extent of actual authority.[104] The Count of Flanders, for example, could refuse a challenge from the Marquis of Lombardy, who possessed only a small castle; and a count who exercised great authority could refuse

* *Ibid.*, 19, n. 4.

† *Ibid.*, 112.

‡ *Ibid.*, 19.

§ *Ibid.*, 17–18.

the challenge not only of a lesser count but also of a marquis, a duke, or even a prince, if these were themselves subject to superiors.[105]

By the same principle, sometimes one who possessed a lesser title than his opponent could properly issue a challenge. So a duke might be challenged by a powerful count;[106] a *serenissimo*,* by an *illustrissimo;* or the latter, by an *illustre*, for example, if the *illustrissimo* held a feud under a prince who was subordinate to another, whereas the *illustre* was subject to one whose authority was supreme.[107] An *illustrissimo*, moreover, could be challenged by a noble of lesser rank if their dissension arose from the accusation of an act of treason which incurred the penalty of death.[108]

There was difference of opinion as to whether a duel should be fought by a king. According to one of the writers, an uncrowned king could challenge a crowned one, and a king not subject to the emperor could challenge the latter.[109] More radical was the belief that a private citizen who was virtuous could challenge or refuse the challenge of a king if the latter was addicted to vice.[110] A contrary opinion, however, was that dueling by a king was entirely incompatible with the public welfare, whether or not he had been crowned.[111]

The discussion up to this point has been concerned only with objections made by the challengee; but, even after the parties had agreed upon a duel, either of them might be declared ineligible by those who had authority to enforce the code of honor. For example, the judge chosen for the duel should prohibit it if the character of either of the parties was a discredit to knighthood.[112]

The challenged party, however, even if he appeared to be ineligible, might fight a duel under certain circumstances. A challenge was sometimes proper, for example, although at the time when it was given the challenged party was regarded as dishonored. Thus one might rightly challenge for an offense given with unfair advantage; and, if a man had been offended at the

* For this and the following terms see Bryson, 17–18.

instigation of a third party, the offender, although his act had caused him to lose his honor, must be challenged.[113]*

Either party was ineligible if he was physically or mentally defective, and this was presumed if he was too old or too young. According to one opinion, the proper age was that which had been decreed by the Emperor Frederick II—namely, twenty-five to sixty.[114] The mimimum age, however, might be twenty,[115] or even eighteen. But a man must not fight a duel if he appeared to be a mere boy.[116]

A challenge was generally considered invalid, moreover, if given to a relative, or to one to whom the challenger naturally owed honor.[117] One opinion, to be sure, was that, if a man had been accused of treason, he should challenge his accuser, even if the latter was his benefactor, his brother, or his father,[118] but this view seems to have been unique. The general belief was that it was not permissible to fight against one's cousin, step-father, etc., and there was still greater reason that there should be no duel between father and son; since the two are composed of the same substance, the victory of either would be incomplete.[119]† A man must not challenge his patron, moreover, or his teacher of the art of using arms—to the latter he owed as much reverence as to his own father.[120]

Above all, the duel was generally confined to the higher classes of society.‡ This principle was not always observed, to be sure, but violation of it was supposed to be contrary to all reason and justice.[121] So those concerned with the code of honor should ignore challenges among rustics.[122] Even though these were temporarily in military service, if they had not renounced their former occupations they were debarred from challenging not only nobles but also professional soldiers. The prohibition applied also to tradesmen; being regarded as mercenary and un-

* This statement assumed that the offender had the requisite social status (Bryson, 52–54).

† *Ibid.*, 33.

‡ That it was thus restricted had been stated by Bartolo (Castillo, [K3]v). The law of the Lombards, however, had permitted even servants, if they asserted that they were rightfully free, to seek to prove this by challenging their masters (Muzio, *Duello*, 88v).

warlike, they had been forbidden even to enter the army. One of the writers cited Vegetius (fourth century)* to the effect that they lacked constancy and courage; being weak, they were not fitted to bear arms, and every little hardship made them infirm; and, since in battle they were hesitant and cowardly, they were likely to use their cunning by seeking flight.[123]

Even after it had been decided that a duel was permissible, there was sometimes uncertainty as to which of the two parties was the challenger. This question, being extremely important because the challenged party regularly had the choice of arms, gave rise to endless disputes.[124]† In order to decide the matter, the two parties might agree upon one or two arbiters, who should be men of experience and judgment, and might be scholars.[125]

One source of difficulty was the fact that the challenger might be the party who had first given an offense, or the one who had first definitely taken steps for a duel. The doubt was caused by the ambiguity of the words used for "challenger" and "challenged" (*attore* and *reo*): one who had been given the lie because he had made an accusation was the *attore* as to the offense; but, if he had given no challenge, it might be decided that he was not the *attore* as to the duel, or that because of the offense his challenge was implied.[126]

A special case, moreover, arose when a man had given an insult not by word but by act. In former times it was the rule that, unless his offense had been clearly provoked, he was the challenger;[127] but by the middle of the sixteenth century the custom was to the contrary. Although it was admitted that the present practice was sometimes unjust, the party who must defend his honor by issuing a challenge was he to whom the insult of act had been given; for it was presumed that it had been given for a good reason. One of the writers, however, seems to suggest that the one offended might give an implied *mentita*, and thus become the challenged party, by declaring that the offender had acted badly.[128]‡

* *Epitoma rei militaris, sive institutorum rei militaris libri quinque.*

† Bryson, 55. ‡ *Ibid.*, 57.

But there was not universal acceptance of the theory that one necessarily became the challenged party by giving a *mentita*.[129] Some held, for example, that a man should be considered the challenger if he had branded as a lie a statement which he said had been reported to him but had not proved that the report had actually been made.[130]*

Another cause of uncertainty as to who was the challenger was the fact that, although theoretically the roles of the two parties could not be reversed,[131] yet in fact one quarrel might give rise to another which caused the challenger in the former to become the challenged party in the latter, and this change could occur even in one quarrel.[132] Such might be the case, for example, when insults were mutual.[133] So if a man called another a traitor and thereupon received a *mentita*, he was the *attore;* if he then gave a slap, he was transformed into the *reo;* if he next received a blow, he again became the *attore;* and, if he now inflicted a wound, he was once more the *reo*.† The fact that each of the parties might thus seek to exceed his opponent in giving offense was one of the arguments against the theory that a duel brought to light the truth.[134]

Since, moreover, a challenged party might become the challenger because of using an incorrect form of *cartello*,[135] he ought to be meticulous in his choice of words. For example, there was difference of opinion as to whether one who gave a *mentita* might with impunity add that he would support his assertion by means of arms;[136]‡ at any rate, he became the challenger if he said specifically that he would resort to a duel.[137] A man who would regularly be the challenged party because of his giving the lie, furthermore, might become the challenger if he added

* In the case of Pezano versus Vitto, the latter asserted that he had been told by five persons that Pezano had slandered him. Vitto thereupon gave the lie, but Pezano denied having made the alleged statement (Alciato, *Responsa*, 207v–8). This denial should have been considered as equivalent to a retraction (Bryson, 85).

† Bryson, 50.

‡ The uncertainty as to this question is indicated by two passages in the *Duello* of Fausto da Longiano. In one he asserted, and in the other he denied, that the challenged party became the challenger by declaring that he would "defend with arms." But in the latter passage the author added that the statement in question should be avoided because it was unnecessary (*Duello*, 21, 173).

to his *mentita* the declaration that he would "prove" or "maintain" it. Such a statement, according to some authorities, was not defensive but offensive and hence should be used only by the challenger; his opponent should not say that he would "prove" his cause but that he would "defend" it.[138] According to another opinion, however, the former statement did not cause the speaker to become the challenger, but at any rate it was improper and hence should be avoided.[139]

When one considers the various punctilios which have been noted with regard to the challenge, one perceives a reason why the duel was not for the masses of the people. As a result, many who had received offenses could only appeal to the law, seek revenge as best they might, or bear the affronts patiently.[140]

CHAPTER II

THE PREPARATIONS

THE preceding discussion has been concerned chiefly with the two principals; but, after it had been determined which of them was the challenger, there must be agreement as to whether they would fight personally or by substitutes. It is not clear, to be sure, to what extent the latter practice, which had been common in the judicial duel, actually existed in the duel of honor; but the use of substitutes was advocated by some of the writers, at least about the beginning of the sixteenth century. Such was the case, for example, if either of the principals was too young, too old, infirm, or otherwise unfit to use arms.[1] A substitute might be used by a man of honor, moreover, if he had challenged a peasant.[2]

If, however, the challenged party although of inferior rank to the challenger yet belonged to the class which was considered honorable, under certain circumstances the challenger must fight personally. An *illustre*, for example, must do so if he had given a challenge without specifying that he would use a substitute, or if his challenge had included the words "with my person against yours." The challenged party might reply in the same manner, or he could say that he would fight either personally or by substitute.[3] Some, to be sure, thought that, if because of the question of rank a substitute was offered by the party who had been challenged, this might be done also by the challenger; but, if either party thus fought by proxy because of some impediment other than the difference in rank, a substitute could not be used by his opponent.[4]

There was difference of opinion as to whether a substitute could be used by the party of higher rank if he was the one who had been challenged. Some laid down the rule that the challenger must fight personally but that his opponent might use a substitute.[5] Others, however, held that the challenged party,

too, ought to fight personally and must do so if he had been challenged as a result of an alleged act of treason which would cause him to incur legally the penalty of death.[6] A lord challenged by a nobleman who possessed no title, moreover, could have no substitute if the alleged offense was homicide, treason to king or country, or breach of faith to the challenger himself.* But if accused of an offense other than these, a count, at any rate, should not fight personally, for this would jeopardize the public welfare.[7]

It sometimes happened that, although the parties were of equal rank when the challenge was accepted, one of them obtained a higher rank afterward. In such a case, the party who had been promoted should not fight by proxy, especially if he was the challenger; but he should refuse the new rank until after the duel.[8]

There were also restrictions as to the eligibility of a substitute. He must be over twenty-five years old,[9] and, like his principal, he must not be infamous;† otherwise, if he was defeated, this might be due not to the injustice of his cause but to his evil character. So he must not be an apostate cleric, for example, nor a man who had committed a crime for which he was prohibited from appearing before his prince.[10] But there was a curious exception: he was allowed to fight against another substitute if the latter, also, was infamous.[11]‡

At any rate, the role of the substitute was not compulsory. Puteo (1471?) said that, although a vassal was required to fight in company with his lord, he was not compelled to take the latter's place.[12] It is not clear, however, whether in this case the reference was to the duel of honor or to the judicial duel.

It was with regard to the latter, apparently, that there arose the question whether a man of superior rank who fought by

* This statement had been made by Andrea d'Isernia (*ca.* 1220–1316) (Marozzo, 104v).

† A substitute who was under sentence of death could not, in order to fight a duel, have his execution postponed (Conrado, 43). The reference is presumably to one who should become infamous after having been chosen as a substitute.

‡ Andrea d'Isernia had apparently held that in such a case each of the substitutes was estopped from alleging the infamy of the other (Marozzo, 122).

proxy was required to attend the duel. According to one of the writers, he must be present, and under guard, if he had been challenged because of an alleged offense for which the legal penalty was corporal punishment, but he was not required to attend if the penalty was only imprisonment. Yet he must give security for the expenses incident to the duel and for his substitute's ransom, which, as will appear later, might be demanded from the party who had been defeated.[13]

By the middle of the sixteenth century the use of substitutes was uncommon;[14] and, although distinguished authorities discussed the question whether the custom was desirable, Susio (1555) and Attendoli (1560) stated that it no longer actually existed. But, since some of the preceding citations appear to assume that substitutes were still used after the middle of the century, the matter was perhaps left to the decision of the judge chosen for the duel, or depended upon local custom. This decline in the use of substitutes seems in general to have coincided with the beginning of the vogue of tractates devoted entirely to the question of honor; these emphasized the fact that honor is personal.[15]

Since the substitute, as he has been discussed up to this point, neither gave nor accepted the challenge, he was not a party to the quarrel, but there was also a type of substitution in which the representative assumed that the quarrel concerned his own honor. It was generally required that such a one should be an interested party, as when he took up the cause of a relative, an intimate friend, or a sweetheart, but he might fight for even a stranger if the latter was unable to defend himself.* A man sometimes fought in the place of a traveling-companion; and even in behalf of a servant, a woman of bad character, or a dog, if these were under his protection. A relative, a friend, etc., might also take the place of one who shortly before the fight had died, provided that death had not been due to fear of the duel.[16]†

As to father and son, their honor was regarded as insepara-

* Baldo had said that one might do so only by permission of the ruler (Marozzo, 103v).

† Bryson, 42, 52–53.

ble;* so, if either was unable to fight, the other must be his substitute. If the party who had an impediment was the father of more than one son, his opponent must fight them in turn, in the order of their age or aptitude for the duel, until he either defeated them all or was himself conquered.

To the obligation to fight for relatives, however, there were exceptions. One was not bound, for example, to support the cause of a relative who had been offended after he had given an offense first.† A man who had been assaulted, moreover, and had thereupon killed his assailant, should not accept a challenge from any of the latter's relatives; for one who sought revenge by giving such a challenge thereby became dishonorable.[17]

These questions with regard to substitutes might, of course, not arise, but there were other preparations which were necessary; one must obtain the grant of a dueling-field, fix the date, and procure a judge. As to which of the parties should take the first steps in selecting the field, theoretically this was, as in former times, the prerogative of the man who had been challenged.[18] He might exercise this right if he so desired,‡ and he did not thereby become the challenger.[19] Sometimes, however, fields were proposed by both parties without regard to precedence.[20]

But generally the initiative was taken by the challenger.[21] This was for two reasons: if it were left to the challenged party, he might claim that he could not secure a field; and, since the effort to obtain it was not so much a privilege as it was a hardship, the task should be imposed upon the party who by challenging had made the duel necessary.[22]

The usual procedure was that the challenger, upon whom rested the burden of proof, proposed three fields; and of these his opponent, who was presumed to fight by compulsion, was given the choice.[23] If it was not possible to offer a list of three fields, however, the challenger might name only one, and usually this must be accepted.[24]

* *Ibid.*, 33. † *Ibid.*, 53.

‡ This right was claimed in the case of Cellesi versus Gatteschi (*Manifesti* . . . . , 10–13). See Appen. VII, p. 167.

But sometimes it might be rejected. If it was in another Christian country, the challenged party must go there if possible, even if his ruler forbade this on pain of loss of property and life; but one was not obliged to go a country which was not Christian. Unless the challenger paid the expenses of the journey, moreover, his opponent could refuse to go to a country which was remote. He could also refuse the field if it was in territory from which he had been banished, or in which he had many enemies, or if it was in a district beleaguered by an army.[25]

Special questions arose if the field was not secured within a certain period, the duration of which will be discussed later. If the failure was on the part of the challenger, and he gave no valid excuse, the other party was not obliged to secure a field unless his dueling-expenses were paid by his opponent. But if, because of the latter's serious illness, imprisonment, etc., his obtaining a field had been impossible, he must notify the other party; and then, according to some authorities, the attempt to secure a field must be made by this party who had been challenged. One writer, however, held that the challengee was free from obligation.[26] But, if having accepted none of the fields suggested by his opponent, he did not secure another within the proper time, it was the custom, at least in the kingdom of Naples, that the challenger could select one of the fields which he had proposed.[27]

In case a field could be obtained by neither party, there could be no formal duel, and authorities differed as to whether the parties should resort to the fight *alla macchia*. According to one opinion, the challenger must summon his opponent to such a duel. At any rate, he would probably do so if he was unable to secure a field and his opponent refused to seek one; and, if the challenged party then declined the duel *alla macchia*, the challenger could proclaim him to be recreant.[28]

Dueling-fields were on the whole alike as to their physical features.* The tract of ground must be large, level, smooth,

* In the days of the judicial duel the combat might take place in front of the court house, in the market place, in a meadow or a glade, or on an island (Gierens, 183). In the sixteenth century the Emperor Charles V, with regard to the proposed duel with

free from dust, etc.; a pebble, for example, by causing the slip of a foot might determine the issue of the duel. The boundary of the field might consist of plow furrows, pits, banks, ropes, stakes, a wooden fence, etc. A special section was reserved for seconds and officials, and within the field was a platform, from which one could see the fighters' movements and hear their words; upon this were stationed the judge of the duel and his counselors.[29]

If the parties agreed upon a field, the next step was to ask the lord in whose jurisdiction it lay for permission to fight.[30] To make this request was the duty of the challenger unless the challenged party assumed it.[31] Normally, a duel could be permitted only by the emperor, a king, a duke, a marquis, a count, or some other competent civil authority. Since with regard to this matter, moreover, there was a joint jurisdiction of allies, a duel could be allowed by one who was allied with the lord of the duelists. But the authority to permit duels did not extend to subject barons; or to governors or viceroys, even though they had full jurisdiction; or to a royal commissioner, even if he were a general. The commander-in-chief of the army of the emperor or of a king or other ruler might permit duels within his own army, but not if there was present his lord, the latter's eldest son, or a younger son who was the lord's general representative; the authority as to duels rested with these.[32]

For an accusation of treason the duel was regarded as obligatory, but otherwise it depended upon the will of the ruler.[33] He should not allow it if it originated from an accusation that was evidently true, even if the accuser had given a gross insult;[34] and, unless there had been an accusation of treason, homicide, etc., a lord should not grant a dueling-field if he was able to make peace. But according to Puteo, duelists generally avoided a lord's refusal by going outside his jurisdiction.[35]

When a lord granted a field, he gave to the challenger an official document, the *patente*. This stated the place, year, month,

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Francis I of France, was said to have preferred to fight on an island, a boat, or a bridge (Brantôme VI, 455). In sixteenth-century Italy, moreover, a dueling-place at Turin was the bridge over the Po (Brantôme, VI, 343, 413–14). See p. 181.

and day of its issue; specified the cause of the duel, the location of the field, and the time within which the grant was valid; and contained the grantor's seal and signature. It also stated, as a matter of form, that he gave his permission reluctantly. The challenger forwarded the *patente* to his opponent.[36]

Opinions differed as to the duty of the parties in case the grant was revoked. According to one view, the challenger was freed from obligation and was no longer bound to be an enemy of the party challenged. But, since the former might be suspected of obtaining the revocation by collusion, he must declare the grantor to be perfidious.[37] As for the party who was challenged, it was very doubtful whether he was obliged to fight on any other field.[38] On the other side of the question, some held that the challenger could seek another field and that the party challenged was not freed from his obligation.[39]

The principle that determined which party should choose the field applied also to the right to fix the date. As late as the time of the book of Marozzo (1536), the decision was made by the party who was challenged; but by the middle of the sixteenth century it was believed that this was the function of the challenger. The question might be determined, however, by local custom.[40]*

But the fixing of the date might depend upon the circumstances; there should intervene sufficient time to secure the field and the judge.[41] Opinions differed as to when this term began. Claudio Tolomei held that it was when the challenger sent to his opponent the *patente*.[42] According to another opinion, it was the date of the *stabilimento;* that is, the agreement concerning the facts of the case, such as the decision as to which party was the challenger.[43] At any rate, the term unless shortened by mutual consent was, in theory, six months.[44] Actually it was generally less;[45] but it might be three, four, five, or six months, or more or less at the will of those in authority.[46]

After the challenged party had accepted the grant of the

* In France the decision as to both the date and the place of the duel was made by the ruling prince. Cottereau thought that this custom originated with Alexander the Great, when he designated the date and the field for the duel between the Athenian athlete and the Macedonian soldier (Cottereau, 454). See Appen. II.

field, the duel was supposed to take place within the period specified by the *patente*, usually forty days.* But by agreement this term could be lengthened or shortened. After the expiration of the period agreed upon, however, the grantor of the field was under no obligation to allow it to be used.[47]

Within the previously mentioned period of several months, it must also be determined who would preside over the duel as its judge.[48] He might belong to one of three classes of judges: "ordinary," "extraordinary," or "mixed." The "ordinary" judge was the commander of the army in which were both the parties to the duel, or the lord of whom they were both the subjects. Some authorities held that this lord should preside ex officio. In this capacity he should decide not only as to the issue of the fight but also as to the disputed points concerning its procedure. An "extraordinary" judge was one to whom the two parties to the duel gave an authority which was limited; he could not consider the *eccezioni*† but only declared the result of the duel. Hence the words used in choosing him must be weighed carefully.

But sometimes an "ordinary" judge could not be obtained because the two parties were not under the same lord or the same military commander, or one of these who had been asked to permit the duel either refused or would not serve as judge; and an "extraordinary" judge might be undesirable on account of his limited authority. The usual judges, therefore, were of the third class, or "mixed." Of these, one generally chose the lord who had granted the dueling-field; according to one opinion, he was the judge ex officio. Like an "ordinary" judge, he had full authority to decide both as to the result of the fight and as to the *eccezioni*. Many lords, however, when granting the field, made the reservation that like "extraordinary" judges they would not decide as to *eccezioni;* or, on the other hand, they might stipulate that, although they would enforce proper pro-

* This had been the period in the case of judicial duels (Levi, 132). In the sixteenth century one opinion was that before the duel at least forty days must elapse after the receipt of the challenge (G. B. Possevino, 309).

† P. 9.

cedure, they would not decide as to the result of the duel but would depute this judgment to the knights.[49]

The judge might be assisted by advisers* who were learned in the code of honor; but this was not necessary if he was educated, as well as familiar with the use of arms.[50] It was also considered advisable that judges should be specialists in moral philosophy, for these were versed in questions concerning honor. The best judge of all was an educated lord; but a man should not be chosen merely because he was a lord, a captain, a colonel, a general, a king, etc.[51]

There was difference of opinion as to whether the judge should be chosen by the challenger or by his opponent. But the question was apparently similar to that of the choice of the field and the fixing of the date; it seems that theoretically the decision, as in former times, belonged to the challenged party, but actually it was generally left to the challenger.[52]

There also developed the custom of nominating three or four judges, of whom one was accepted by both parties.[53] But the mere fact that they agreed upon a judge did not make him competent.[54] Even a prince was not considered suitable to be the judge if instead of being devoted to arms he was given over to trade, or to hunting, music, dancing, etc.; these, according to one of the writers, were wanton pleasures of courtiers.[55]

A proposed judge, moreover, might in certain cases be rejected by one of the parties. Neither of them was bound to accept a man who was his inferior in rank.[56] When a judge was selected by the challenger, furthermore, the challenged party could reject one who was known to be his enemy, or the friend or relative of the challenger or of the latter's patron.[57]

If the judge was accepted, he was informed of the cause of the duel.[58] But in case revealing this was not proper, as when it affected the reputation of a woman, the parties might simply say that there had been an offense to honor. The judge, moreover, must not force them to tell the secret.[59]†

* Cottereau, perhaps referring to the procedure in France, said that in addition to this judge, or acting in his stead, there was another who was called "the judge of the field" (Cottereau, 454).

† Cf. Bryson, 40 n.

During the period preceding the day of the duel, both the judge and the duelists had certain obligations. The former must seek in every way to bring about an honorable peace.[60] If during this time either of the parties offended his opponent, the judge must inflict upon the offender a suitable punishment.[61] The contestants should refrain also from engaging in other duels, or in jousts or tournaments.[62] This obligation applied especially to the challenger; for, until he had proved his cause, he was regarded as dishonored.[63]

In the earlier days of the duel a special kind of preparation consisted in attempting to produce in the two parties approximate physical equality. Even near the end of the sixteenth century, one of the writers insisted upon the principle of equality as preceding from nature. He held that the powers of the four elements which contend with one another—water, fire, earth, and air—are equal; else the world would perish. Bulls, he added, fight among themselves on equal terms, the same is true of sheep, and lions disdain to fight with other lions that are easy to conquer. As to human beings, he said that this principle had been accepted by the Greeks and the Romans.[64]

The physical handicap which one sought to overcome was usually that of the party who was challenged. If he had a defect which was great enough to prevent his fighting at all, he could sometimes, to be sure, use a substitute; but, if he was not disabled to this extent, a disability similar to his must be inflicted upon the challenger.[65] The challenged party was not required to have defects, moreover, similar to those of his opponent; since it was the latter who had brought about the duel, the challenged party should be allowed to enjoy his natural advantages.[66] One of the writers, to be sure, thought that, if the challenger had but one eye, there should be a corresponding handicap of his opponent, but this was not a rule.[67] Although if either party had a disabled arm, he could not be prevented from using the other,[68] yet if the challenger was simply left-handed, and the challenged party was not, the challenger must also fight with the right hand.[69] At any rate, duelists practiced using both.[70]

In earlier times if the challenged party was physically weaker than the challenger, the latter must undergo fasting or bloodletting; if the challenged party had a defective limb, the corresponding member of the challenger must be bound; and, if the challenged party was blind in one eye, the challenger must have an eye not merely covered but actually put out. The reason for the last-mentioned procedure was that the challenged party's knowledge that the loss of an eye in the duel was more serious for him than for his opponent produced fear which put him at a disadvantage. At least some of these customs had ceased to be practiced, to be sure, at the time of the book of Castillo (1525), but there were those who advocated such measures as late as the work of Marozzo (1536).[71]

Even before the sixteenth century, however, these drastic methods encountered opposition, and by the middle of the century there was general repudiation of the theory of producing complete physical equality. Some said that, when the challenged party was one-eyed, the challenger should simply have an eye covered.[72] One of the writers, holding that if the challenged party was blind in one eye, a challenge might be refused, thought that the idea of putting out an eye was ridiculous. He offered as a comparison the case of a race between a lean man and a fat one, for which to obtain equality one contestant should be required to take on more flesh, and the other to starve himself.[73] The various methods of producing physical equality in duelists were rejected, finally, not only because they were impractical but also for the same reason for which there was objection to certain weapons: they were not employed in war.[74]

For the duel of honor, moreover, one did not generally attempt to procure physical equality between substitutes.[75]* Yet as late as the time of Alciato's *Duello* (1541), some held that, if the challenged party, fighting by proxy, could find only a substitute who was one-eyed, the challenger should have one of his own eyes in some way rendered useless.[76]

A certain psychological preparation for the duel consisted in studying the opponent's heredity, education, and "tempera-

* The contrary had been stated by Lignano, but he apparently referred to the law of the Lombards (*De duello*, 283v).

ment." As to this last-mentioned feature, one of the writers said that the sanguine and the choleric exceed others in perseverance; and that this is true even if they are lean, although lean men are generally thick-witted. To these two classes, the sanguine and the choleric, he added, belong nearly all the races of southern and western Europe, such as Spaniards, Gascons, Italians, and Greeks. As for the phlegmatic, he noted that they are generally larger and stronger than others and are prudent and persevering; but, unless roused to anger, they are sluggish. To this class belong most of the races of the North, although these have many strenuous mountaineers.[77]

The subject was treated also by another authority. He declared that the sanguine are brave, the choleric are active, and both classes are rash; and he mentioned also the melancholic, whom he called prudent but slow and clumsy. He added that for the art of fighting, both offensive and defensive, there were many schools which gave training to overcome temperamental defects.[78]

During the period of preparation some tried to foresee the result of the duel by consulting astrologers,* physiognomists, interpreters of dreams, etc.[79] The astrologers asserted that the parties would be equal if the planets were equally favorable to both of them; that there was an advantage for the one who had a better horoscope; and that a man would lose the duel if his "ascendant" was in the seventh "house," which was that of his enemy. Since, however, "second causes" proceed from God, the influence of the stars could be overcome by divine intervention;† at any rate, if the parties were equal as to their horoscopes and otherwise, the victory would fall to the cause which was just.[80] At least one of the writers, moreover, rejected the theory that such power was possessed by the stars.[81]

It was supposed, furthermore, that foreknowledge might re-

* Lignano had declared that, if two persons were born under similar conditions of the heavens, they were destined to be friends, and hence would not be opponents in a duel (*ibid.*, 281v). An interlocutor in a dialogue of Tasso, moreover, said that the aspect of the planets at one's birth is a matter of great importance; otherwise it would make no difference whether one were born in Germany or in Africa. He added, however, that the most important influence is education (*Il Forno*, in *I Dialoghi*, II, 280).

† Cf. Bryson, 108.

sult from the study of names, numbers, and the letters of the alphabet. One of the writers had known in advance, he said, that a certain duelist would be defeated; this knowledge came both from astrology and from the letters of the duelist's name.[82] Another, noting that some names possess a hidden power, said that a certain Raimondo possessed a book which gave numbers for all the letters of the alphabet and that, by adding the numbers of those which formed the name of the duelist, and dividing the sum by nine, one learned who would be the victor.[83]*

The details which have been noted with regard to both the challenge and the subsequent preparations must have prevented many proposed duels from taking place. The regard for the various punctilios was doubtless one of the reasons for the fact that, of all those who issued *cartelli*, not one in ten went to the dueling-field.[84]†

Another reason was that sometimes those who had agreed to fight a duel were allowed to withdraw from their engagement. They might do so, by mutual consent and without the permission of the judge, even as late as the day appointed for the fight, provided that they had not reached the field. By a curious use of logic, this privilege was based upon the fact that the duel was illegal.[85]

Even after the contestants had arrived at the dueling-place, moreover, the grant of the field might be revoked. The grantor must do this if he had learned that the information given him concerning the quarrel was false.[86]

There were circumstances, also, under which a duel might be postponed. For example, the man who was to act as judge

* Pythagoras believed in the magic power of numbers, Terence referred to the numbers that are within names, St. John the Evangelist mentioned "the number of a man" (Rev. 13:18), and Celio Rodigino (*ca.* 1450–1525) showed that the perfect number is nine (Attendoli, *Duello*, 64–64v). The significance of this last-mentioned number, furthermore, was emphasized by Dante; for example, in the *Vita nuova*.

† Brantôme, who had personal knowledge of duels in Italy, said that sometimes they were postponed for more than two years. He made the acquaintance of an Italian knight who declared that he had spent almost his entire fortune of a hundred thousand crowns in seeking a duel with one who persisted in avoiding it. Having only two hundred crowns left, at the age of forty he became a Knight of Malta in order to have a livelihood (Brantôme, VI, 288, 295-96). For other proposed duels which perhaps never took place see Appen. VII.

would probably order a postponement if during all of the appointed day there was a heavy rain. He and the two parties to the duel must decide, moreover, whether the fight should be postponed if there was interference by disorderly spectators.[87]

If no hindrance prevented the combat from taking place on the appointed day, it was customary, in order that there might be time to inspect the field, etc., that the challenger should go to the place of the duel three or four days, and the challenged party one day, before the fight;[88] and on this last day, at any rate, there must be present both parties,[89] accompanied by their seconds. These were sometimes called *maestri*, *avvocati*, or *pattini*, but the common term was *padrini*. The writers, it seems, do not state how many seconds attended each duelist; perhaps sometimes there was only one,[90]* but there might be more.[91]

Among the duties of a second were that he should inspect the field, examine either personally or by means of "confidants" the opponent's armor, secure for his principal an armorer, make protests, seek to cause any doubtful questions to be resolved in favor of his principal, etc. Some of these proceedings, at least, must be attested by a notary; but it is not clear whether there was only one, or whether a notary accompanied each *padrino*. On the day before the fight the seconds must go to the judge of the duel and announce that their principals were ready.[92]

Although the prevention of unfairness was the duty of the judge, the *padrino* must insist that his principal receive his rights, even if this demand led to a duel between the seconds themselves.[93] This had occurred often, but it was considered a barbarous practice which had been introduced by ruffians. So if one second challenged the other, the latter could refuse, and no good ruler would grant a dueling-field.[94] At any rate, the seconds could not settle their quarrel until later.[95]†

A duelist had certain obligations in case he could not appear by the day before that appointed for the fight. He must notify his opponent, state his excuse, pay certain expenses, and offer

* This appears to have been the case in judicial duels (Levi, 124).

† The squabbling of the seconds, said Landi, spoiled the pleasure of the spectators and disgusted them (G. Landi, 240).

to fight the duel at a later time.[96] If the excuse was invalid, the absentee lost his cause.[97] The assertion that his coming had been prevented by his lord, for example, would be an invalid excuse if it was known that he had suspected this hindrance beforehand; he should have departed while he could do so.[98]

Certain excuses, on the other hand, were valid, such as the fact that the absentee was wounded, seriously ill, or in prison, or that his coming was prevented by storms, or by floods which had washed away the road. But such excuses must be formally attested by men who were reliable. For cases of illness, there must be certificates of physicians.[99]* One who because of illness caused the duel to be postponed for a specified time, and was still disabled at the end of that period, could then fight by substitute.[100]

Granted that an excuse was valid, opinions differed as to the proper procedure. One of the writers held that the duel should be fought on a later day.[101] Another view was that, if the absentee was the challenged party, his opponent was not obliged to fight later but might do so if the challenged party paid the necessary expenses; the challenger's agreeing to such a duel, moreover, would show his courage.[102] According to still another opinion, both parties were free from obligation.[103]

There were also questions as to the procedure if on the day of the duel one of the parties arrived late. As for the challenger, who must prove his case, or become the loser, within the appointed day, it was to his interest to arrive in time.[104] If the delay was unavoidable, however, one should allow for the duel a whole day.[105] As for the party who was challenged, he was permitted to appear at any time before the judge left his platform; but, if he did not arrive until near the end of the day, he injured his reputation. Since a duel must cease at sunset, moreover, the same amount of time which his tardiness caused to be lost ought to be used for a duel on another day.[106] But this was at the option of the challenger.[107]

* In the previously mentioned case of Pezano versus Vitto (p. 22, n. *), the former was accused of having said that the latter had fallen ill merely because of fear that his opponent would kill him (Alciato, *Responsa*, 207v).

The writers also considered the possibility that on the day of the duel either the judge or one of the duelists might fail to appear at all. As for the former, his absence might be blamed upon the party who had chosen him; hence this party must secure another judge, and he must also obtain another field.[108] If the absentee was one of the duelists, and his opponent and the judge should leave before sunset,* the duel must be fought at another time. So the duelist who was present should remain within the field all day.[109] He or his second, moreover, must have the public herald go three times—in the morning, at noon, and toward evening—to each of the four corners of the field, and each time call out a summons, or the three summonses were given in succession at some time determined by those in authority. The summons stated the cause of the proposed duel, declared that the party who was present had come on the appointed day and was ready, and called upon the opponent to appear or to give his excuse, either personally or by representative. After each summons the party who was present, or his second, stated that the opponent was absent and had no representative to give his excuse. At sunset the party who was present declared that he had waited all day ready to fight and that his opponent was absent because he realized that his cause was unjust. Hence the former accused the absentee of contumacy and asked that he be declared dishonored, despicable, and infamous. Thereupon the judge, after consulting with authorities on the code of honor, proclaimed that the absence of the party in question was a confession of the injustice of his cause; that he was contumacious, was regarded as conquered and dishonored, and should not be allowed to fight in the future; that he must pay the expenses of the preparations for the duel; and that the other party was the victor and had his honor made clear. This sentence the judge pronounced three times. The victor then rode thrice around the field.[110]

There were exceptions, however, to the rule that the absentee must be denounced as recreant. This was not done, for ex-

* Cf. the case of Charles of Anjou and Peter of Aragon, in which, however, the absentee is said to have arrived before sunset (Appen. III).

ample, if he had sent a valid excuse. But he must pay the necessary expenses.[111] Another case in which he must not be declared recreant arose when he had not accepted the field where he was awaited.[112]

If the party was absent because of his death, it was necessary to learn its nature. If, for example, he had committed suicide, he was declared to have lost the cause for which he was to fight the duel; for suicide was considered to be the result of cowardice and worse than desertion by a soldier; it was an offense not only to one's self and to one's country but also to God.[113] If the death was not by suicide, moreover, the surviving party might assert that it was produced by fear of the duel. The judge must thereupon send an official to consult expert physicians, in order to learn what was the cause of the deceased's malady, the hour when he became ill, and the hour when he died. If it was shown that his illness had been "natural," there could be substituted as duelist one of his relatives or friends, or some knight, and this change must be accepted by the opponent. But if death occurred suddenly without fever or other "natural accident," on the day of the duel or a little before, while the deceased was preparing for it, presumably he died of fear. In this case opinions differed as to whether the judge should decree that the victorious cause was that of the survivor. This was the general belief as late as the time of the book of Marozzo (1536); such a death was supposed to indicate the judgment of God. Yet, according to one opinion, the surviving party must fight the duel if the place of the other was taken by such a one as is mentioned above;[114] the cause of the deceased was not proved to be unjust, for his death was unavoidable.[115]

If both the judge and the duelists were present, there still remained certain preliminaries. The contestants heard Mass and prayed, saying that they fought for the truth. Then they retired to their tents, where they awaited their seconds. Since before the fight the combatants must not become tired or worried, the seconds attended to the necessary details.[116] They presented to the judge the certificates of agency from their principals, exhibited all the *cartelli* and the *patente* for the grant of

the field, and made a formal statement of the circumstances of the duel. The first who spoke was the *padrino* of the challenger.

There was next an inspection of the fighters' equipment. If there was no stipulation to the contrary, the seconds of the challenged party presented two similar sets of weapons, one set to be chosen by the seconds of the challenger. These consumed much time in examining the weapons, piece by piece. By the middle of the sixteenth century, it had ceased to be customary for the challenged party to take oath that the two sets of arms were actually alike, but he must do so if requested by the judge.[117] If the fight was to be on horseback, first the second of the challenged party and then that of the challenger presented his principal's horse. The seconds must see whether one horse or saddle was higher than the other.[118]

It was sometimes held that each of the parties to a duel must swear to his belief that his cause was just.[119]* When a man was to fight as substitute, he must not only take this oath but also swear that in the fight he would do his best.[120]

In the earlier days of the duel the judges or the seconds demanded, moreover, both from principals and from substitutes, an oath that they did not use magic.† Even as late as the middle of the sixteenth century, it was thought that it was well to demand this oath from not only the principals but also the seconds; and the latter should, furthermore, swear that, if they should learn of the use of magic by either of the principals, they would immediately reveal this fact to the opposing party and to the lord who had granted the field. To prevent the use of charms that might be concealed, the judges or the seconds must

* But, according to Claudio Tolomei, this oath was required from neither party (*Pareri* . . . . , L, 5). By the law of the Lombards, moreover, but not by that of the Emperor Frederick II, the oath was taken only by the challenger (Lignano, *De duello*, 283; Conrado, 44v).

† Attendoli mentioned the biblical account of Simon Magus (Acts 8:5–24) and noted that Josephus imputed magic power to King Solomon, that magic was mentioned by Cato, and that its efficacy was not denied by the philosophers, the Twelve Tables, Virgil, or Pliny (Attendoli, 63–63v). Alciato said that Antiochus I, king of Syria (281?–261? B.C.), defeated the Gauls by means of a magic figure on his standard; that the Romans made use of magic verses; and that the Scythian Tartars conquered Henry II of Poland, in 1241, because they had upon their standard the Greek letter X and a horrible image from which issued smoke and an unbearable stench (*Duello*, 42v).

also subject the duelists to a careful search.* According to a distinguished authority, it was not sufficient merely to shake their clothing; he knew, he said, that sometimes on the night before the duel words of incantation were written upon the body.[121]

Some, to be sure, held that, although the use of magic, being prohibited by law, should not be attempted, the accounts of its efficacy were merely fables;[122] but others were more credulous. They believed, for example, that a man became invincible if he held in his mouth the stone called *alettoria*, which was supposed to be formed in the stomach of a cock;† if he wore on his helmet as a heraldic device the sign of the Ram (Aries); or if he carried, sometimes suspended about his neck, certain herbs, such as peony, wormwood, St.-John's-wort, or pellitory of Spain. This last-mentioned plant was supposed to be very efficacious also for counteracting other charms. When entering the field, moreover, some took care not to step on the boundary line, for it was a common belief that one who did so might be bewitched.[123] Certain duelists, furthermore, declared that on the field they had become bewildered at the first sight of their opponents; and it was beyond doubt, said one of the most influential writers, that sometimes, when one of the contestants looked into the opponent's eyes, the latter party murmured magical words. The same authority had also seen a man who said that he could enchant two swords, which thereby could not wound, and that afterward he could disenchant them.[124] Another writer held that true judgment in a duel might be hindered by sorcery, such as the use of an enchanted weapon.[125]‡ Men believed also that de-

* Brantôme noted that at the time of the duel in France in 1547 between his uncle Châtaigneraye and Jarnac, the former remarked, when one sought to search him for magic charms, that he did not need them in order to fight such a man as was his opponent. Brantôme added that magic charms had been found on several duelists in Italy. As for sacred relics, a duelist was allowed to carry them, but there was doubt as to whether this privilege should be enjoyed by only one of the parties (Brantôme, VI, 287–88, 304–5; Coelli, 26, 28).

† This belief had been held by Marsilio Ficino (1433–99) (Alciato, *Duello*, 42v). Milo (the Greek athlete?), moreover, according to tradition won all his fights because he carried a crystal which was of the size of a bean, and which came from the stomach of a cock (Muzio, *Duello*, 52v–53).

‡ But he added, "if it can be enchanted" (G. Landi, 204).

mons could make the air unwholesome and thus produce illness and that incantations could even cause death.[126]

But by the middle of the sixteenth century those who had authority over duels seem to have ceased to concern themselves with the question of magic. So it was no longer customary to require duelists to take the above-mentioned oath, unless this had been specially requested.[127] Concerning this oath and the matter of subjecting the duelists to being searched, the opinion was that, although a brave man might become cowardly in the duel because of charms or enchantments, and it had been proved beyond a doubt that these had been used by some who were esteemed courageous, yet one could not be sure of finding magic charms by searching, and to a man who employed them an oath meant nothing.[128]

As soon as the parties had the weapons in their hands, or just before beginning the fight, each offered a prayer.* In this he said that, since he fought not from hatred but only because of human frailty and the demands of worldly honor, he would be grieved if he took his opponent's life. In case he should lose his own, moreover, he begged for mercy upon his soul. But, in the hope of victory, he committed his cause to the judgment of God.[129]

* A form of prayer suitable for such an occasion was composed by G. B. Possevino. According to him, a duelist who recited it and promised God that he would feel much sorrow when he killed his opponent would thereby acquire very great prowess (Maffei, 251).

CHAPTER III

THE ARMS

THE arms discussed by the writers on the duel included articles both of offense and of defense,[1] and between these classes there was not always a distinction. In either capacity, for example, one might use an iron gauntlet[2] or a dueling-cloak; with the latter, one sometimes rendered an opponent helpless by throwing it over his head.[3]

The authorities were not in agreement as to which was the party by whom the arms should be chosen,* or as to when his opponent should be told what they would be. Chiefly because of the former question, or because of objections to arms which had been proposed, the day appointed for the duel was often spent in disputes,† which sent the spectators home disgusted.[4] At some time before the middle of the sixteenth century, to be sure, a time which Fausto da Longiano (1551) called the best period of the duel, the selection of not only the arms but also the dueling-field and the judge was prohibited to the party who had begun the quarrel. The writer said that one who had received a blow, however, ought to lose the choice of arms if he had replied by stabbing. If it was doubtful whether an offense of act had been provoked, moreover, the selection of arms was

* As for the armor, the Frenchman Cottereau said that the choice was made by the ruling prince (Cottereau, 455).

† In 1528 a famous case of a proposed duel, which did not take place largely because of disagreement concerning the arms, was that of Francis I of France and the Emperor Charles V. According to one account, Francis issued the challenge because of a matter which was personal, but Charles in his reply expressed the desire for a "state" duel (Albergati, 215v). It appears, however, that the challenge was given by Charles, with the accusation that Francis had broken his word (Gierens, 196). According to Brantôme, moreover, Charles asserted that a challenger had the choice of both the dueling-place and the arms: for the latter, Charles chose the sword and dagger and was willing to fight either with or without the dueling-cloak. Francis, on the other hand, claimed the choice of arms as the party who had been challenged; and he held that a duel with sword and dagger was not appropriate for kings: he wished to fight on horseback, in full armor, and with sword and lance (Brantôme, VI, 455).

left to the judge of the duel; and it had often happened that, after the challenger had refused arms chosen by his opponent, they left the final choice to the judge or to some arbiter. For duels between soldiers in active service, furthermore, frequently the arms were selected by the general. The above-mentioned authority held that this custom, or the choice of arms by the judge of the duel, ought to be universal. In fact, at the time when this author was writing, in many places the arms were selected by the princes or the minor lords, who did not reveal their choice to the combatants until the day of the duel.[5] By agreement, moreover, the decision might be made by the two contestants themselves.[6] In general, however, the choice pertained to one of them; to the challenger if his opponent so desired,[7] but regularly to the party who was challenged.[8]

Yet it was considered more courteous that he should choose only the weapons; at any rate, usually each party brought to the dueling-field his own armor. Sometimes, to be sure, the challenged party insisted upon preparing the armor of his opponent, and therefore asked him to have his body measured; but to this procedure there were objections. By the time of the duel, for example, the armor might not fit because the challenger had gained or lost flesh. The armor might be treated with a poison, moreover, which would take effect when in the course of the fight the wearer became heated.[9]

The challenger usually did not know before the duel what would be the weapons.[10] In earlier times he had been informed in advance,[11] and this custom was advocated by certain writers in the sixteenth century, who held that the challenger should be given opportunity to practice. In fact, all honorable knights were opposed to the contemporary custom of keeping the matter secret until the parties entered the dueling-field.[12] According to one opinion, the challenged party ought to present the weapons one day before the duel, so that the seconds might have time to correct defects.[13] Actually, however, keeping the challenger in ignorance of the matter until the day of the duel had become the custom by the time of the book of Castillo (1525).[14]

At the beginning of the previously mentioned period of forty

days,* the challenged party generally sent to the challenger a list of arms which the latter must procure, and these included the ones which his opponent had decided to use. This list was sometimes so long that, as was remarked by one of the writers, it seemed to include all the weapons which human cruelty had invented against the life of man.† But it was considered more courteous not to mention the armor, and of the weapons to name only those that were customary.[15] According to one opinion, moreover, the challenger could use arms that were his own property, provided that they were of the same kind as those of his opponent.[16]

Theoretically, the challenged party might select from the list whatever weapons he preferred.[17] He would naturally choose those which tended to neutralize any physical defect in himself, or gave him an advantage if the defect was in the challenger.

Generally, however, the freedom of choice was supposed to be restricted. Some authorities held that the challenged party must not select arms that would give him an advantage which was unfair.[18] His opponent if physically weak, for example, could refuse, for his own use, arms which were too large or too heavy.[19] Yet he suffered a handicap; although the weapons must be of the same size, and perhaps also of the same shape, a duelist could not prevent his opponent from using those which exceeded his own in weight.[20]

The choice of arms, of course, depended to a large extent upon whether the duel was fought on horseback or on foot. The former method was preferred by some, especially in the earlier part of the sixteenth century. The duel between Pepoli and Rangone, in 1516,‡ received adverse criticism on the ground that fighting on foot was unbecoming to military leaders.[21] It was the general custom, moreover, to fight on horseback with shield and other armor, lance, sword, and dagger, at the time of the duel of Martelli, Bandini, and their companions in 1529.[22]§ According to Alciato (1541), this method was usually considered more appropriate in the case of duels between noblemen. Carac-

* P. 31.

† For such a list see Appen. VIII.

‡ Pp. 187–90.

§ Pp. 185–86.

ciolo (1567), furthermore, in his book on horses and horsemanship, declared that this type of duel, being difficult and spectacular, aroused in those who witnessed it an enthusiasm which inspired the duelists to their best efforts.[23]

At the end of the century another specialist on the subject of horses enumerated the ordinary weapons and the armor of the horse and of the rider. Some of the weapons were the broadsword, the rapier, the dagger, the battle-ax, the mace, the lance, and the pistol. But the battle-ax and the mace, which were unwieldy, were not much employed at the time when he was writing.* The spears and the spontoons of the Moorish and Spanish horsemen, moreover, were rarely used by Italians. The most common of all the weapons were the rapier, the broadsword, the lance, and the pistol. The lance was carried resting on the thigh; and the pistol, which was at least four spans long, was suspended from the pommel of the saddle.[24] Still another writer on horsemanship suggested an additional weapon; he recommended that the animal be trained to kick.[25]

As for the armor, for both horse and rider, it ought to be only that which was customary. For example, the Marquis di Gonzaga would not permit, for duels fought under his authority, that the head armor of the horse should include protection for the eyes.[26] But in general the horse, as well as the rider, was covered with armor as completely as was practicable.[27]

After the middle of the sixteenth century most of the authorities on the duel seem to have preferred that it should be fought on foot.† Except for the case that a duelist was physically weak, the combat on horseback had lost its popularity because men were unwilling that a victory should be shared with a horse;[28] and, although if the challenger was accustomed to riding, his opponent could choose to fight either on foot or on horseback, yet the former method was considered more honor-

* Muzio (1560) had said that he considered the battle-ax to be an honorable weapon for knights (*La Faustina*, 56).

† Such was the usual method in France at the time of the duel between Châtaigneraye and Jarnac in 1547; the weapon was the sword, and the only protection was a shield (Coelli, 26, 28; cf. Brantôme, VI, 287–88, 304–5).

able, for it more clearly displayed *virtù*.* A further consideration was the fact that the horse sometimes caused its rider to be defeated.[29]

Assuming, then, that the parties fought on foot, the authorities were not in agreement as to whether there should be armor. Since in earlier times the absence of this protection was characteristic of fights between ruffians, in the sixteenth century some of the writers regarded armor as generally necessary.[30] It might be omitted, to be sure, if the parties were skilled in the use of weapons;[31] but, according to a celebrated authority, the preference of the rabble for duels without armor was wrong, and men who fought thus were no more honorable than wild boars. People who value their lives lightly, he added, have lives of little value.[32] It was not sufficient, moreover, that the armor should consist of merely a helmet, a shield, a cloak, etc., which protected only certain parts of the body; for such was not the usage in war.[33]

According to some, furthermore, the armor must be such that neither of the duelists was given an unfair advantage.† For example, one could reject a helmet which interfered with the sight, as when the challenger was blind in one eye, and his opponent chose a helmet which covered the eye that was sound.‡ Some considered it also unfair to wear a helmet which was so highly polished that it dazzled the opponent's eyes; to insist upon armor which hindered bending the elbow, the knee, or other part of the body;§ or to impose upon a weak man armor

* For the meaning of this word see Bryson, 104–10.

† For a certain duel between two gentlemen of Rome, said Brantôme, the armor extended from head to foot, except for an opening twice as large as the palm of the hand. This hole was just over the heart. The party who had the choice of arms practiced with a fencing-master and learned to strike always in the spot which was unprotected. One may imagine the result (Brantôme, VI, 295–96).

‡ Brantôme said that formerly in Italy such a helmet had been sometimes proposed but had not been allowed (Brantôme, VI, 293).

§ Muzio, on one occasion when he was a *padrino*, prevented the use of armor which did not permit kneeling (*La Faustina*, 22). Brantôme said concerning the combat in France between his uncle Châtaigneraye and Jarnac that, since at the time of the duel Châtaigneraye was crippled in the right arm, his opponent prescribed a piece of armor which held the left arm rigid; but this, Brantôme added, was contrary to the agreement, which provided for arms used by gentlemen (Brantôme, VI, 269–73, 287–88, 304; Coelli, 26, 28).

which was heavy.[34]* There was objection, likewise, to armor which was unfair because the parties were not of the same height. In this case the two suits of armor should not be of the same actual length. The party who was the taller, moreover, enjoyed an unfair advantage if the armor covered only the body and the legs and gave no protection to the head, as when there was either no helmet or one open at the top; and he was at a disadvantage, on the other hand, if the only armor was a helmet, or if this was so attached to armor on the back that, according to the expression of one of the writers, the wearer was forced to contemplate the sky.[35]

Judging from the lists which were sent by challenged parties to their opponents, however, it seems that the choice of armor was practically unrestricted. A great freedom in selection was allowed even by some of the authorities on the duel. So the challenged party might choose a helmet which by shutting off the sight of either eye rendered a one-eyed challenger unable to see at all. If the challenged party was strong and his opponent weak, the former might choose heavy armor. If he was the taller, he might prescribe that they should fight bareheaded. When, on the other hand, the challenged party was the smaller, he might choose to have attached to helmet and shoulder pieces knives which could cut in all directions, so that his larger and presumably less active opponent could not seize him;[36]† and he might demand the use of a gorget which would prevent his opponent from looking downward. Such armor was thought to be permissible because the advantage due to difference in height is a gift of nature.[37]‡

* In a duel fought at Ferrara at about the time when Lucrezia Borgia was its duchess, the weight of the armor of one of the contestants, a soldier from La Mirandola, is supposed to have caused his death (Catalano, *Vita di Ludovico Ariosto*, 267, n. 23).

† In Giraldi's *Ecatommiti* there is an account of a duel permitted by the Grand Duke Alphonso I (1476–1534) at Ferrara. The challenged party chose armor which at the places where one could seize hold had projections as sharp as razors. But the grand duke summoned a smith to file these down and sharply rebuked the party who had chosen a kind of armor not used by knights in war (*Ecatommiti*, Deca X, nov. 8).

‡ In Piedmont, said Brantôme, there was a duel between a young gentleman-soldier and a Gascon sergeant. The latter, although he was the party challenged, allowed the choice of arms to his opponent, who chose to fight with sword and dagger. Being small, moreover, he demanded that there be worn a steel collar with sharp points, which pre-

In spite of the opposition of some of the writers, early in the sixteenth century there arose the custom of fighting without armor. The first of these combats in which the duelists were men of distinction was that between Pepoli and Rangone, December 31, 1516.[38] Such duels were considered more honorable because the fighters showed greater reliance upon their *virtù*.[39] Although the shield, the coat of mail, etc., since they were used in war, could not be refused for the duel, yet the absence of armor, at least over the face, indicated greater courage, and hence was a characteristic of the duels of nearly all men of honor.[40] According to one statement, the armor of duelists sometimes incased them completely, sometimes it protected only the most noble parts of the body, and sometimes it was not used at all: the first method was that of the cowardly; the second, that of the half-hearted; and the third, that of the courageous.[41]

Since duelists were thus unprotected, there was special need for fairness in the choice of weapons. Some of the authorities made the following observations:

Because the smaller of the fighters could reach his opponent more easily with a thrust than with a stroke, it was generally unfair to require swords without points.[42] A right-handed duelist should not be forced to use a weapon adapted only for the left hand.[43] A man who was so nearsighted that he could not see beyond the point of his sword could rightly refuse to fight with a pike.[44] If a duelist was superior to his opponent in the matter of wealth, he should not insist that the weapons should be newly made or otherwise too expensive.[45]

On the other hand, there was opposition to the use of weapons which were simple to the point of being vulgar.* One authority,

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vented his taller opponent from looking down. Although the right to require the use of this equipment was disputed, it was finally allowed, and the small man easily killed his opponent (Brantôme, VI, 293–94).

* In an emergency, as when a duelist had broken his sword, he might properly fight without weapons by twisting his opponent's arm, biting him, etc. (Puteo, 117 ff.). But to throw away weapons which were serviceable, and fight with the fists, or by wrestling, kicking, etc., was dishonorable; for the duel should test the strength not of the body but of the soul (G. B. Possevino, 318; A. Possevino, *Due discorsi*, 25v, 28v).

to be sure, noting that ancient soldiers had used slings, and that according to lawyers *tela* included stones, admitted the use of the latter;[46]* but both these and clubs were usually excluded by the general opinion that the weapons should be those regularly used in war.[47]†

The same objection applied to arms which were rare or peculiar. Such were those of the Turks, swords of which part of the blade had been cut off, and all new kinds of weapons unless they had come into general use among soldiers. According to one opinion, it was much better to refuse to fight than to use arms which were ridiculous; refusing to fight showed that one was not by nature a fighter, but the choice of unusual arms was inexcusable. So one should not choose at will weapons of iron, of steel, of wood, of leather, or of bone; darts, partisans, or other spears; pikes or lances; spontoons or other kinds of halberds; hunting-knives or daggers; or rapiers, Roman swords, Slavic swords, scimitars, etc.[48]‡

But the principle that the arms should be those used in war was sometimes disregarded. Certain princes approved of unusual weapons which gave advantage to these princes' followers.[49] Since every weapon when first invented was a novelty, and since the duel itself was called extraordinary, one might use weapons which were either larger or smaller than those employed in war, or which were otherwise unusual. In fact, there had hardly been a duel in which the weapons had not been in

* He also approved of the procedure of Pittacus of Mytilene, one of the Seven Wise Men of Greece, in his duel with Phrynon, the captain of the Athenians. The latter wore on his helmet a little image of a fish; whereupon Pittacus used a net, in which he entangled his opponent and then killed him. The opponent ought to have been allowed, if he so desired, a similar article (Alciato, *Duello*, 45–45v; Millingen, I, 9). Fausto da Longiano compared the use of this net to that of a dueling-cloak (*Discorso*, 9).

† This opinion had been held by Andrea d'Isernia and Baldo (Muzio, *La Faustina*, 9).

‡ Brantôme knew of several instances, in Italy, in which the *cartelli* stated that the arms would not necessarily be those used by knights and other gentlemen. He mentioned also a case in which a man ordered to be made at Milan two swords and two daggers so tempered that unless handled in a certain manner they would break like glass. Then in a duel fought without armor the party who had been forced to accept these weapons and who, unlike his opponent, had not learned how to use them broke them and was killed by the other party. Brantôme noted that it was too late to object to a weapon after accepting it and going to the duel (Brantôme, VI, 294–97).

some way different from the ordinary ones of soldiers. For example, duelists had used rapiers, swords without points, those with two points, and those with blades only a span long; and battle-axes, after they had ceased to be common in war, had been the weapons in duels fought between most honorable knights. It was not permissible, moreover, to use for the duel any and all weapons that had been employed for war, such as the sling, or the biblical jawbone of an ass;* and even weapons which were commonly used in war could be refused if they were not equally fair for both parties.[50]

Duels should not be fought, moreover, with bows and arrows.† One of the writers, appealing to the authority of the ancients, noted that although Homer's Paris, who challenged the Greeks to combat, carried a bow, there was no mention of its being used.[51]

There was also opposition, at least in the earlier part of the sixteenth century, to dueling with firearms. The writer cited above, who held that guns were invented by the devil for the destruction of the human race, again invoked a classic authority, by suggesting that punishment in hell for using such weapons was depicted by Virgil.‡ Other objections to the use of firearms were more practical; duels fought with them would be difficult to judge because they did not reveal the fighters' *virtù*, and the danger to others than the participants would prevent the presence of spectators.[52]

The dueling-weapons which were considered the most honor-

* Judg. 15:15–17.

† At the time when Charles VIII of France conquered Naples (1493), said Brantôme, a duel took place there between an Italian and a captain who was a Gascon; and the latter, having the choice of arms, selected a weapon with which the Gascons were adept, the crossbow. His opponent at first refused it; but the Gascon's friends declared that these weapons had formerly been used in war by men of their country and by the Genevese, and that Philip VI had ordered some of them for the battle of Crécy (1346). These arguments finally prevailed, and the duel was won by the Gascon. Brantôme himself, moreover, was in favor of allowing such arms as crossbows, arquebusses, etc.; especially since at the time when he was writing, near the end of the sixteenth century, men were allowed to fight duels with pistols (Brantôme, VI, 297–99).

‡ The verses cited in support of this idea are the following:

"Vidi et crudeles dantem Salmonea poenas,
dum flammas Iovis et sonitus imitatur Olympi" [*Aeneid* vi. 585–86].

able were those with which one could cut or thrust, such as halberds, lances, knives, daggers, and swords.[53] For the duel on foot, the weapons were generally restricted to those which gentlemen regularly carried, the sword and the dagger;[54] and one usually fought with both of these, with the sword and cloak, or with the sword alone.[55]

Of all weapons the favorite was the sword. In the earlier period, to be sure, when the code of honor did not permit fighting without armor, dueling with no weapon but the sword was considered characteristic of ruffians, but this had ceased to be true by the end of the first quarter of the sixteenth century. In fact, the sword was common to every nation and was the weapon used most generally. It was also given the highest praise by specialists on the art of using weapons. They held that the sword, which had been invented by the biblical Tubal-cain,* was the only weapon of which it was true that he who knew how to handle it could use all the others; it was ornamental as well as perfectly efficient for fighting, both offensive and defensive; and, in short, it was the quintessence of all arms. As representing justice, moreover, it was a symbol when it was borne before emperors, a weapon when it executed a criminal, and both a symbol and a weapon when it belonged to a knight. Since it was also the weapon most easily procured, and the propriety of using it was recognized everywhere, no duelist could reject it.[56]

In addition to the principal weapon, duelists were sometimes allowed to use others. They might carry small ones, for example, which had not been mentioned in the agreement for the duel; on at least one occasion these were stones.[57] But even though several weapons might be permitted by agreement, it was considered dishonorable for one party to fight with a long weapon while his opponent used a short one.[58]†

* Gen. 4:22.

† The Marquis Spineta Malaspina, in a duel with Galeazzo dalla Cava, had chosen to fight with a short sword in the hand and a long one at the side, but he dropped the former and used the other; as the result he was victorious (Muzio, *La Faustina*, 14). In Giraldi's *Ecatommiti* there is an account of a duel in which each party was allowed a spear and a sword; and while one of the contestants according to the regular custom

Some authorities, finally, considered that the question as to which arms were proper was unworthy of discussion. They thought that the arms should be such that a soldier could fight equally well with or without them.[59] One writer favored the method used in the duel between the Macedonian soldier and the Athenian athlete in the time of Alexander the Great:* it appears that each party used whatever arms he pleased.[60] According to another, it was better to fight for a just cause without the choice of weapons than for an unjust cause with this privilege of choice.[61] In the words of Shakespeare:

> What stronger breastplate than a heart untainted!
> Thrice is he arm'd that hath his quarrel just,
> And he but naked, though lock'd up in steel,
> Whose conscience with injustice is corrupted.†

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began to fight with the spear in his hand and the sword at his side, the other as he entered the field attached the sword to the spear, and with this long weapon he killed his opponent (*Ecatommiti*, Deca X, nov. 8).

* Appen. II.

† *King Henry VI*, Part Second, Act III, scene 2.

CHAPTER IV

THE COMBAT

ON THE day of the duel the judge must decide at what hour it should begin. This ought not to be so early that the eyes of the contestants would be dazzled by the sun, or so late as to make possible the objection that there was not allowed sufficient time.[1]

Entrance to the field was prohibited to all except the duelists, the judge, and his advisers; unless one followed the custom of the Spaniards, in which case admission was granted also to men who in previous duels had been victors.[2] When the duelists appeared, the first to go upon the field must be the challenger. After his opponent had entered also, the former approached him and said that as challenger he had come to prove his cause, if his opponent did not confess himself to be in the wrong. The challenged party replied that he was present to defend himself. They should use no discourtesy.[3]

If the fight was to be on horseback, the rider as he entered must seek to make a fine appearance.[4] He should look straight between the ears of his horse and hold his body neither slouched nor too rigidly erect. His arms should be neither bent inward nor stretched out stiffly, and the elbows should be held slightly away from the body. The stirrup leather must not be so short that the toes would be forced to point to the sky, or so long that they would be directed toward the ground, as if the beauty of the leg consisted only in its length.[5]

Just before the combat there was a procedure similar to that which had been used for the judicial duel: a herald made a proclamation to the spectators, warning them that the penalty for certain offenses was confiscation of property and corporal punishment, such as the amputation of a hand. These offenses consisted of being present with weapons, entering the dueling-

field, and failing to sit quietly on the benches;* in order not to attract the attention of the duelists, the spectators must not speak loudly, and must refrain even from coughing and from spitting.[6]†

Then the herald thrice sounded his trumpet as a signal for the fight to begin. Although some held that the challenged party should be allowed the advantage of making the first attack, the general opinion was that, since the one who had the burden of proof was the challenger, his opponent should first stand on the defensive.[7]‡ But this passive attitude on the part of either of the contestants existed only in theory.[8]

A question to be noted at this point is whether after beginning the contest the parties could change the subject of the quarrel, in order to fight for another cause. The challenger could not do so without the consent of the other party; but, if the latter refused, he somewhat injured his reputation.[9] He should not consider the proposal, however, unless the challenger first confessed that in the original quarrel he had been in the wrong. In fact, the change of the quarrel by either party was generally regarded as improper. In order to take this step, a man ought to obtain not only the consent of his opponent but also the special permission of the judge, unless the latter had previously given them leave to fight over more than one cause—a procedure which would be irregular.[10] According to one authority, moreover, a party who had succeeded in changing the quarrel lost both causes, even if he won the duel; and each of the parties was dishonored.[11]

One of the ways in which a duelist could seek to change the

* This did not apply to the seconds, if they perceived any injustice; and, even if the restrictions should include them, they ought to disobey rather than allow their principals to be killed unfairly (Giraldi, *Ecatommiti*, Deca X, nov. 8).

† According to Cottereau, who was probably stating the procedure in France, the herald finally gave notice that the fighter who was conquered would be driven from the field; if he had insignia of nobility, these would be defiled; and wherever he went he would be deprived of honor. Cottereau added that, just after this proclamation, both the parties took in turn the oath before the prince, swearing first that they carried no charms, and then that they fought in a just cause. They thereupon touched each other's hands and embraced and again declared that they fought most justly (Cottereau, 454).

‡ This had been the opinion of Lignano (*De duello*, 283v).

quarrel was by saying to his opponent, "Defend yourself, traitor." The result might be as follows:

If the party who was thus insulted was conscious that in the original quarrel he was in the wrong, he replied, "I renounce the former quarrel and will fight because of the new insult."* Then the other party, if defeated in the duel, could say that since the quarrel was changed he had not lost his cause; having forced the renunciation of the original quarrel, he should be declared the victor. If the opponent replied that his renunciation of the first quarrel had ended that matter, the other party could say that, since his opponent had sworn that his first cause was just, his renunciation of it was a confession of perjury; hence he was dishonorable and therefore ineligible to fight a duel. In fact, according to Marozzo, each party was right as to one of the quarrels and wrong as to the other. The case was similar to that of a creditor who in a lawsuit demanded a thousand ducats, whereupon the debtor declared that the other party owed him a thousand sheep. If the said debtor acknowledged his obligation, and that of the other litigant was proved, judgment was given for both. In the above-mentioned case of the duel one party ought to be declared the loser of the former quarrel because of his having renounced it; and his opponent should be regarded as having lost the latter quarrel because he had not exercised his privilege of refusing to fight and because his calling his opponent a traitor was a provocation. But such questions must be decided by those in authority who had seen and heard the details—namely, the judges.[12]

One of the writers held that the party who had been called a traitor ought not to renounce the former quarrel but should simply give the lie. If he then won the fight which resulted from this insult, he did not lose his original cause. If he renounced it, however, his opponent should accept the renunciation, refuse to fight further, and ask the judge to award to him the victory. The lord who had granted the dueling-field, moreover, should

* Brantôme heard of an Italian who, having begun a duel for a cause which was unjust, became remorseful. He thereupon pretended to flee. When his opponent then called him a coward, he gave the lie, and declared that he would now fight for a cause that was just (Brantôme, VI, 292).

revoke the *patente;* and if a duel concerning the new quarrel was fought without his permission, explicit or tacit, and one of the parties was killed, the survivor could be punished for homicide.[13]

According to another writer, the fact that one of the parties said, "Defend yourself, traitor," did not give them the right to fight about this and thus change the quarrel. If they should do so, one might revoke the *patente* and drive them from the field; and, since they would be dishonored, subsequent challenges given to anyone by either of them could be refused. If one of them was killed, moreover, the survivor might be punished by being beheaded.[14]

It was also not permissible, after entering the field, to renounce the fight entirely. This would be dishonorable: if the challenged party confessed that he was in the wrong, he would be disgraced; and if the duel was renounced without his making this confession, disgrace would fall upon the challenger. Since, moreover, the disclosure of evil, which was regarded as a function of the duel, concerned the public welfare, the parties could not withdraw from their engagement without the permission of the judge. Especially if the quarrel concerned specifically the prince or the country, the parties ought to be compelled either to fight or to declare the truth. But such compulsion did not seem possible if the quarrel was only personal.[15]

It was chiefly in books devoted to the subject of arms, and in others which treated of horsemanship, that there was discussion of the methods of using weapons. Thrusting was preferred to slashing;* for, since the former permitted a greater reach, it better protected the one who used it, and it was more likely to be fatal to the opponent.[16] If the duel was fought on horseback, the rider should sit erect and hold the right shoulder forward to protect his breast, keep his lance raised until he came close to his adversary, and then lower it and strike the opponent's visor. If the horseman used a pistol, he should not fire until very near or even touching the enemy's cuirass; otherwise he

* There was much discussion concerning the stroke which caused the defeat of Châtaigneraye, in his duel with Jarnac in France. This stroke, which seems to have been that of hamstringing, became known as *le coup de Jarnac.*

generally missed, or the armor could not be pierced. Many fired at the thigh, so as to hit either the rider or the horse. If the opponent was preparing to fire, one could ride past him and so miss the shot.[17] Such details give a commentary on the quality of sixteenth-century firearms and marksmanship.

The writers on the duel considered the question of the proper procedure in the case of accidents, such as the falling of one of the parties, or the falling, bending, or breaking of a weapon. As for the fallen duelist, one opinion was that, although his opponent was technically justified in killing him, yet to take advantage of one who was defenseless was infamous.[18] It was supposed that even a dog will not attack a man who is prostrate.[19] Others, however, declared that one was under no obligation to permit a fallen duelist to rise;* unless there was an agreement to the contrary, a man who was in the power of his opponent might justly be killed, for his misfortune resulted from that to which the parties had appealed, the justice of God.[20]†

There was also difference of opinion as to whether a contestant should permit his opponent to recover a fallen weapon. According to custom, this was not compulsory, and some of the writers held that, while a man was attempting to regain the weapon, he might properly be attacked;‡ if he did not recover it quickly, he was disgraced; and, although one must follow local custom, the falling of the weapon should be regarded in the same way as the falling of a duelist: all was ruled by fortune, which sometimes caused strong men to be defeated by the intervention of God.[21]

Other opinions were more generous. The dueling-code, to be sure, permitted that the defenseless party should be attacked, but to allow him to regain the weapon was chivalrous.[22] So al-

* But beyond the Alps, said Puteo, in order that he might rise he was given assistance (Puteo, 52).

† This had been stated by Lignano (*De duello*, 283v).

‡ Lignano, holding that to allow him to regain the weapon was as absurd as picking up a fallen fighter, said that, since a duel was sometimes won by the man who was the weaker, the issue ought to be left to chance, to which the parties had voluntarily appealed; the duel was not a legal action, and accidents revealed the divine judgment (*ibid.*, 283v).

though many thought it allowable to attack a man whose weapon had fallen or was broken, opportunity should be given for the fallen weapon to be picked up, even if for this there had been no agreement; and stipulations which prohibited recovering the weapon were not honorable.[23] G. B. Possevino noted that, although letting a sword fall was less pardonable than having it broken, yet there might be an excuse; for example, the weapon might not fit the hand. So one should be allowed to pick it up when its falling had not been caused by the opponent's prowess.[24]

A further question concerned the procedure if a sword became bent. Even if its replacement was prohibited by previous agreement, the judge should permit it if a party bent his sword by his own stroke, for an agreement must not lead to injustice.[25]

There was discussion, also, as to whether one should be allowed to replace a weapon which was broken.* This privilege was forbidden by custom, but some of the writers held that it ought to be permitted; although one's prowess was indicated by breaking an opponent's armor, the same was not necessarily true with regard to a sword, for the mishap was often due to its defectiveness. At any rate, breaking an opponent's weapon was not an art which could be learned; it was no indication of skill.[26]

Some made no distinction between the effect of having a sword broken and that of letting it fall, and for either case they held that the weapon should be replaced. This was not compulsory, to be sure, but it was considered to be an act of knightly honor.† Although with regard to these matters men differed in opinion, the most magnanimous held that on the occasion of the breaking of a weapon, or the falling of either a weapon or one of the contestants, the opponent should not seize the advantage;

* Under the law of the Lombards at the time when duelists usually fought with clubs, if these were broken they were replaced, but this was not the case if the contestants used the weapons of soldiers (*ibid.*, 283v; Puteo, 52).

† In Giraldi's *Ecatommiti* there is mention of a knight of Ferrara, Piero Balletti, who had fought twenty-four duels and had won them all; but he would never attack a man whose weapon had fallen or been broken, even if this had been caused by Balletti himself. He said that, if he should win by such means, he would be eternally ashamed (*Ecatommiti*, Deca X, nov. 8).

for the parties had promised to reveal the truth not by chance but by their *virtù*.[27]

According to others, however, a broken weapon must not be replaced except by previous agreement, for the accident occurred by the divine will. Even in cases in which knights had agreed to permit the replacement of broken lances, the number allowed being three, and had also granted the use of additional weapons, yet while a party was providing himself with them he might rightly be wounded or killed.[28] By the middle of the sixteenth century, furthermore, stipulations permitting the replacement of a broken weapon were uncommon for duels which were fights to the finish.[29]

In fact, one rarely saw the acts of courtesy which were noted in connection with duels of former days.[30] A certain form of generosity, moreover, mentioned by one of the writers, seems to have had no advocates; after inflicting wounds, one was not supposed to adjourn the duel so that the opponent might be healed, in order that the parties could fight again on equal terms.[31]

There were special considerations regarding the duel on horseback. There was discussion, for example, as to whether, in order to have the left hand free to carry the shield, a man should be allowed to hold the reins between his teeth.[32] Another question concerned the act of dismounting. One opinion was that it was not permissible to do so unless one's horse was wounded;[33] but others held that, although the challenged party had chosen to fight on horseback, yet if this was not desired by the challenger, the latter might, even immediately after entering the field, kill his horse and fight on foot, using his lance as a pike; it was sufficient to have been on horseback at the beginning.[34]

There arose the problem, moreover, as to whether a man in the act of dismounting should be attacked.[35] According to one view, this was an offense against honor, which required that the opponent should dismount also; at any rate, the attack was unjustifiable if the other party had dismounted only because of the wounding of his horse.[36]

There were questions, furthermore, with regard to the treat-

ment of the horse of an opponent. For example, one ought not to place on the field objects which might cause the animal to fall or be lamed.[37]* Although this was regularly permitted, it could be prohibited by agreement; and some, holding that it was dishonorable, said that stipulations which allowed it were contrary to the nature of the duel.[38]

With regard to the duel either on horseback or on foot, there was discussion as to the propriety of resorting to trickery in general.[39] Soldiers had held that in a fight to the finish one might even use weapons which were poisoned. But this was condemned by authorities on the code of honor, for trickery was less esteemed than was courage. So one ought to observe all agreements, with the previously mentioned exception that one might avoid fighting on horseback. At any rate, trickery should be excluded from a duel fought to obtain glory.[40]

It seems that if a duel took place on a day of sunshine, however, one was allowed to maneuver so that the sun would be in the opponent's face. Although this, to be sure, seemed equivalent to the case of interfering with an opponent's sight by requiring the use of a certain kind of helmet,† yet the former procedure was regarded as permissible, for it was an exercise of skill.[41]

Unless there was an agreement to the contrary, the duel was supposed to be a fight to the finish.[42] But it did not necessarily result fatally; a man was declared to be defeated if he was taken prisoner, surrendered, recanted, or fled from the field.

If one of the parties being in the power of the other would neither recant nor surrender, the rule of the duel permitted that he should be killed.[43] But some thought that this was unreasonable[44] and that, if the party who was helpless was the challenger, his opponent won without killing him. If, however, the one who was spared was the challenged party, it was not certain

* Conrado called these objects *tribules, seu tripodes;* they were doubtless some kind of caltrops. He also opposed the use of a *pomum ignitum,* and Giulio Ferretti in connection with the duel on horseback mentioned the *ignitum artificium;* such devices apparently were intended to cause the opponent's horse to become frightened (G. Ferretti, 310v; Conrado, 34).

† P. 48.

that the winner was the challenger. But, according to one opinion, a challenger who spared his opponent, even if this was a violation of their agreement, won the duel and gained honor in the eyes of men and of God; and, if the challenged party who had thus had his life spared asserted that he was the winner, he ought to be put back into the fight with his wounds in the same condition as when the duel had ceased.[45]

When a contestant was killed while fighting, the victory was generally awarded to his adversary. If, for example, one knocked the other off his horse and out of bounds, but the latter party quickly returned and by pricking with his sword caused the horse of his opponent to fall and thereby to kill its rider, the victor was the survivor. If his opponent's injury although grave was not fatal, however, the decision was difficult.[46] Even if a duelist was killed, moreover, he won the duel if his opponent had surrendered.[47] But the judge must decide who was the winner of a duel on horseback if one of the contestants dismounted, seized the other's foot, and caused him to fall upon the former party and crush him. If during the duel, furthermore, one of the parties killed himself, it might be necessary to determine whether this was caused by fear and the prowess of the opponent.[48]

Sometimes the duel resulted in the death of each of the parties. If this occurred either while both were within the field or while both were outside the boundary, the winner was he who lived the longer.[49] The party who expired first, however, was declared to be the winner if his death took place within the field and his opponent died outside it.[50] Learned lawyers, moreover, said that the moment of death was presumed to be that in which the deceased had received a wound which was mortal; and, according to another opinion, the winner was he who had inflicted a wound first. If the facts with regard to such cases could not be ascertained, the victory was awarded, as in other matters which were doubtful, to the party who had been challenged.[51]

A special case was that of one who while engaged in the duel said, "I surrender" or "I am conquered," and then immediately

killed his opponent. Some considered this to be permissible unless the opponent had accepted the surrender by ceasing to fight.[52] Since "actions speak louder than words," and the latter are subordinate to the intention, the attack was supposed to prove that the spirit of the speaker was unconquered, and that he had spoken ironically.[53]* According to another view, however, one who thus killed an unsuspecting opponent did not win, for he had broken faith and deceived with a lie.[54] At any rate, the attack must not be made after the surrender had been accepted. This question as to the time must be decided by the judge and the group of spectators.[55]

The code of honor recognized a duelist's right to take his opponent prisoner. According to one opinion, to be sure, this was unreasonable; but, since it was regularly held sufficient to capture without wounding, victory did not require bloodshed.[56] The question of capture, however, was involved in a number of technicalities. If one party wounded the other mortally, for example, but fainted at the sight of the blood, whereupon his opponent bound him as a prisoner and then died, the winner was the survivor. The action of the deceased had gained for him no more honor than if he had bound a piece of wood or a man who was asleep, and fainting gave to the other party no disgrace; as in the case of one who dies from fear, the emotions are not in the power of man.[57] If the challenger, moreover, disarmed his opponent but was unable to capture him, the victory should be awarded to the latter, for he deserved more honor for defending himself in this condition than did the challenger because of disarming him.[58] The decision as to certain other cases, however, seems to have been uncertain. Such was the question whether a duelist should receive honor for capturing an opponent who had fallen from his horse because of the weight of his armor; and whether a man was the winner if he had been bound as a prisoner by his wounded opponent and then the latter died.[59]

The duel ended with honor for the winner, but not necessarily

* As an analogy, Marozzo noted that the enemies of Christ ironically called him the king of the Jews (Marozzo, 113 ff.).

with disgrace for the loser, when the latter surrendered. This was honorable for the former even if his opponent was not wounded, or had given a wound first.[60] As for the party who by surrendering admitted his defeat, after the abolition of the Lombard law he was not asked to confess that his cause had been unjust.[61] In fact, a man may have been forced to surrender because of an accident, such as his falling, or that of his horse, the falling or breaking of his weapon, the fact that he was blinded by dust, etc. In such a case, according to one opinion, a duelist who preferred death rather than the risk of receiving scorn for surrendering had a weak soul; a man who was dead, moreover, could not show valor. Another held that the attitude of preferring death rather than surrender indicated cowardice; the supposed heroism arose from the fear of falling into the hands of the opponent. Greatness of soul, on the contrary, is shown by the ability to endure misfortunes. The exceptions of the suicides of Cato, Brutus, Cassius, and Cleopatra were supposed to be due to the customs and the religion of their time.[62] So, after having done one's best, surrender indicated a great soul as well as prudence. Even soldiers, however much they might boast, nearly always preferred to surrender rather than to be killed; as was remarked by one of the writers, what men say does not matter so much as what they do.[63] Since, then, surrender without dishonor could be made by soldiers in battle, or in a besieged city, it could be made also by duelists.[64] Although surrender, to be sure, was akin to peacemaking by *remissione*,[65]* it was more honorable;[66] it might incur dishonor to a certain extent, but a duelist who was killed lost not only honor but also his life and soul. Virtue, furthermore, is more clearly revealed by adversity; hence a man's surrender might cause him to be more highly regarded even by his opponent.[67]

Since the usual purpose of the duel was to prove some uttered or implied statement, the fight ended if one of the parties recanted.[68] He was the loser even if he was uninjured and his opponent was wounded mortally.[69] But there was discussion as

* Bryson, 95–101.

to what constituted a recantation. Some statements which were mere excuses before the duel were real recantations if uttered in the course of the fight. Among such forms of speech were: "I did say 'traitor' but not to you," "I struck you by accident," and "I struck you not knowing you." Other expressions which might have the effect of recantations were the following: "I surrender as conquered"; "Do not injure me, for I am your prisoner";* and "Do not consider what I said or did, for I did not speak or act against you deliberately." But there was generally no recantation, and hence it was permissible that the speaker should be killed if he said, "I am a dead man" or "I surrender myself as dead," or if he merely asked for mercy. According to one opinion, however, expressions such as those which have been mentioned might sometimes be regarded as recantations and hence give sufficient satisfaction; the words "I am a dead man," for example, constituted a recantation if the opponent so accepted them.[70]

There was difference of opinion as to whether recantation on the field was less honorable than an apology before the duel. One view was that when danger was imminent, fear was natural and hence more excusable.[71]† Yet recanting in the duel was usually considered a great infamy. So the seconds were accustomed to urge their principals to conquer or die.[72] A cowardly recantation destroyed one's honor forever; and, whereas those who died gloriously lived by their fame, the life of the infamous was a daily death.[73] There was admiration, therefore, for a man who refused to recant even a falsehood; if defeated, he was stained as to his justice but not as to his valor. As for recanting the truth, this was worse than death, and confessing an offense of which one was innocent was baser than an ordinary lie.[74]

Recantation gave less shame, however, than did seeking safety in flight.[75] Since this, moreover, proved that the fugitive's cause was unjust, his opponent might perhaps rightly follow and kill him, even if he had taken refuge among the attendants

* That a duelist should not kill an opponent who uttered either of these expressions had been stated by Baldo (Castillo, fol. Ov).

† Cf. Bryson, 100.

of the ruler. But, according to another opinion, their presence gave immunity, as to one who had the right of sanctuary.[76]

In the cases which have been noted up to this point, the result was due generally to the victor's own efforts; but he might be declared the winner for other reasons. These might be, for example, the violation of a rule of the duel on the part of his opponent, or the fact that neither party had overcome the other by the end of the day. As for the former reason, one might lose the duel because of having touched the boundary of the field, or passed beyond it.[77] Some thought that the former prohibition, however, should be omitted.* By the duelists' agreement, moreover, touching the boundary might be allowed; and by the middle of the sixteenth century a stipulation to the contrary was rarely made for duels which were to be fought to the finish.[78]

More serious was the act of going out of bounds.† In earlier times, the penalty for this transgression was especially severe. If any part of a contestant's body passed the confines of the field, the duel was continued only if he returned immediately; and, if he did not do so, he might receive one of two penalties: if the transgression had been unavoidable, he simply lost the duel; but, if he had acted deliberately, he was beheaded.[79] Some writers, however, held that in either case the part of the body which had been out of bounds should be amputated. The matter was usually provided for by previous agreement;[80] but it was customary that if either party passed the boundary of the field, he was declared to be the loser.[81]

Some authorities made certain distinctions. A party won the

* According to Brantôme, a man ought not to be declared the loser because of having touched the barrier of the field, unless he had been pushed or thrown against it by his opponent (Brantôme, VI, 299–300).

† This would occur, naturally, either at the entrance to the field or at some other spot where there was no barrier. As has been noted, dueling-fields were not always inclosed by fences (p. 29).

The rule that a man lost the duel if he put his foot outside the field was made, according to Saxo Grammaticus (d. first quarter of the thirteenth century), by Frotho (or "Frothe") III, king of Denmark. He was supposed to have been a contemporary of the Roman Emperor Augustus (Maffei, 132–33; Gelli, *Il Duello*, 5). The book of Saxo Grammaticus is *Gesta Danorum* or *Historia Danica* (Paris, 1514).

duel if he threw out of the field his opponent; but, if while unsuccessfully attempting to do so he went out of bounds himself, he was regarded as defeated. Since, however, he had gone outside by accident and not because of fear, the power of his opponent, or disobedience to the judge, this rule seemed unjust.[82] As for one who had thus transgressed because of having been pushed, moreover, one opinion was that if he returned immediately and then overcame his opponent, he was the winner; for he conquered not by pushing but by fighting.[83]

The decision was uncertain if one of the parties had outside the boundary only his head, there being no transgression by his body, and the position of the opponent was just the reverse. If each of the parties had been forced across the boundary by his opponent, on the one hand it seemed that, since honors were equal, the fight should be continued; but, on the other hand, since the body is governed by the head, the party whose head was out of bounds might be considered as defeated. The weight of authority, however, seemed to favor the one who had outside the boundary only his head, the theory being that the loser of the duel was the party who, as compared with his opponent, had out of bounds a larger part of his person.[84]

Some authorities, ignoring such distinctions, laid down the general principle that the loser should be he who was out of bounds first, provided that, if the part of his person that was over the line should be amputated, this would cause his death. If, however, such operations would kill both parties, it was better to omit the penalty and let the fight go on; and, if the amputation would kill only the party who had crossed the boundary last, the winner should be the one who had gone out first.[85]*

But punishment for overstepping the boundary, like the prohibition against touching it, was a vital feature of the duel only in the earlier period. It seems to have been practically obsolete after the middle of the sixteenth century.

Sometimes the actions of neither party had determined the decision by the end of the day. If so, the victory was generally

* These various technicalities were supposed to imitate the rules of the gladiatorial contests in the Campus Martius at Rome (Castillo, [N 2]).

awarded to the one who had been challenged. This occurred, for example, if he had simply hampered his opponent, as when he had continuously held him by the foot. The decision was not affected, moreover, by the fact that there had been wounds.[86] A celebrated authority, however, thought that, in the absence of an agreement to the contrary, victory should be awarded to the party whose fighting had shown him to be the superior.[87]

There was some difference of opinion as to just when the dueling-day ended. According to one statement, which doubtless referred to the law of the Lombards, the fight could not last longer than twenty-four hours;* but the period was generally from morning until night—more specifically, until sunset. This was in order that the judges might see clearly. Some authorities said that the day lasted until the first appearance of the stars, and Pliny had noted that, although these shine continuously, they are visible only when the sunlight fails; hence sunset and the first appearance of the stars are contemporaneous. Since this was the terminus of the time within which the challenger could prove the justice of his cause, it was to his interest that the day should be long; so for him the best season for the duel was summer.[88]

Sometimes, to be sure, as had been permitted by the Lombard law, the duel might be continued on another day.† This could be done with the consent of the challenged party and of the lord who had granted the field, if the agreement had not provided for a specific date, or had stipulated that it was not necessary for the duel to be completed within one day, and if the continuation did not cause it to fall on a feast day of the church. The French authority Cottereau said that with the approval of the judge the duel might be continued next day or later in case of bad weather, or if the fight was indecisive because of lack of time, the equal ability of the contestants, or their weariness. Some of the writers, however, noted that one must follow the agreement of the parties or the custom of the country.[89]

* P. xix.

† Lignano had said that an indecisive duel must be continued from day to day until it was settled (*De duello*, 283v–84; G. Ferretti, 312).

But others emphasized the fact that continuance of the duel on another day should generally not be permitted. One opinion was that, unless there had been something to prevent the fight, it might not be held later except by agreement of the parties, either at the time of the duel or previously.[90]* According to another writer, the duel ought not to be continued if the challenger had promised to make his proof on the appointed day.[91] Still another authority said that, except by previous agreement, the duel must not be continued at another time unless by the consent of both the challenged party and the lord who had granted the field.[92]

There were further problems if before the end of the day the judge gave his final decision. Since this was premature, it was doubtful whether it ended the duel permanently. Some held that it did so unless the parties had agreed to fight to the finish; but, if the loser was the challenger, who in the attempt to prove his cause was entitled to fight until sunset, he could demand satisfaction from the judge. Other authorities said that the challenger ought to seek another judge and another field; and that, if he obtained them and paid the expenses, the challenged party could not refuse.[93] Some thought that, even if one of the parties had fallen and was helpless, the judge should not declare him to be the loser so long as he tried to fight; but others held that, although he did not deserve dishonor, he was the loser even if he was not wounded mortally.[94] There arose, moreover, the following question: When the judge awarded the victory to one who stood with sword raised to kill his prostrate opponent, but the winner himself had been wounded, was he exempt from the expenses incident to the duel?[95] Another special case was this: whatever might be the judge's authority ordinarily, even if both fighters were wounded severely he must not stop a duel fought because of an accusation of treason. If he did so, the combat must be renewed at another time.[96]

Besides the duels which have been discussed up to this point, there were, at least in the earlier period, some in which victory was awarded for such reasons as that one of the parties had been

* This had been the opinion of Baldo (Castillo, [M 2]v).

the more courageous, or had inflicted the first wound, etc.,[97] and sometimes the contestants received honor or dishonor in various degrees. A duel of this kind took place usually because of a vow or a love affair, for adventure, or for the display of strength and valor. Since it was not necessarily the result of an insult, it was not always a genuine duel of honor.[98]

Yet it might be caused by an insult such as a slap. In this case opinions differed as to whether in the duel the offended party received sufficient satisfaction by inflicting a wound.* But since receiving satisfaction was sometimes not identical with winning the duel, the parties must continue to fight until the end of the day; the victor might be the one who had been wounded.[99]

Some other technicalities of this type of combat were as follows:

Dishonor was incurred by one who dropped his sword, or lost a piece of his armor; and it was more serious to lose the sword than the helmet, the helmet than the shield, the shield than the gauntlet, and the gauntlet than other armor. Being knocked down by the opponent was more disgraceful than simply falling. But an agreement that a party who should fall would thereby be considered as defeated was valid if he fell while being pursued, even though he had not been touched. In a duel on horseback, falling from the horse was a greater dishonor than falling with him, or than failing to strike the opponent. If, in striking him with a lance, the latter was merely broken, moreover, the assailant received less honor than he would have obtained if the lance had been shattered. If one of the parties fell from his horse after dealing blows which left his opponent dazed, there was no decision, and the fight could be continued, either on the same day or later.[100] It might be necessary to decide also such questions as these:

Should the challenger be penalized if he gave ground? If it had been stipulated that a party would be the loser if he should fall, what ought to be the decision if both fell? Who was the winner if one who was left-handed had been compelled to fight

* Bryson, 50.

with the right hand, and both combatants were wounded in their hands? If it had been agreed that the victor would be the party who should inflict the greater number of wounds, might one use a weapon which caused two or more wounds simultaneously? Who was the winner if a contestant, having been knocked from his horse, excited it to run against the horse of his opponent, with the result that the opponent fell and broke his leg? What should be the decision if one party, having fallen from his horse, seized the bridle of the other horse and overcame the opponent?[101]

The honor received by inflicting wounds, moreover, might be in proportion to their number or their importance. It could be agreed, for example, that the victor would be the party who should inflict the first three wounds.[102] As for the degree in which a wound was serious, there were the following observations:

The loss of a foot was probably a more grave injury than the loss of a hand, but a wound in the arm was more important than one in the leg. A wound in the right hand, which was generally used in battle, was regarded as more serious than one in the left hand. It gave less honor to wound in either hand, moreover, than in the head; for, in fencing, a hit in the hand was generally not counted, whereas one in the head counted three points. There was more honor in giving a blow in front than at the back; and, since the face of man was supposed to be the likeness of God, it was especially disgraceful to receive, and hence a great honor to give, a wound in the face.[103]

One received special honor for cutting off the opponent's nose, or putting out one of his eyes. The question as to which of these feats was the more important must be decided by the judge, but the matter was discussed as follows:

On the one hand, the absence of the nose produces a shameful sight which cannot be concealed and which subjects the loser to the greatest ridicule; and also if a man loses an eye there remains the other, whereas he has only one nose. On the other hand, since the nose conducts the refuse of the brain, and gives forth vapors which are malodorous, it is a base member. The

eye, moreover, is the most excellent member because it is the most sensitive; being the instrument of light, it enables man to fight and to read, and recognizes objects the memory of which is imprinted upon the brain and rejoices the heart; and it is the member most closely related to the soul. It was more serious to lose the right eye, furthermore, than the left, for men regarded the former more highly. One inflicted an injury still greater, of course, by blinding a man who had but one eye.

The loss of the eye was compared also with other injuries. It was more serious than the loss of the teeth, but less so than losing a hand, or receiving a thrust through the body; in the latter case there were practically two wounds, where the weapon entered and where its point protruded.[104]

Most of the discussions of this type of duel, that which was fought for "points," were written before the middle of the sixteenth century; and, according to a writer whose book was published in 1565, the contestants sought only to kill.[105] So it appears that in the latter part of the century the other kind of combat had fallen into disuse.

Yet, since the victory resulting from a duel was of two kinds, that with regard to the quarrel and that concerning the loser's person, there might be one of four decisions. First, one might conquer as to the quarrel but not as to the opponent's person; this occurred when the loser recanted but did not surrender. Second, one might be the victor as to the opponent's person but not as to the quarrel, as when the defeated party was wounded or killed and did not recant. So, if one fought in order to make the other retract a statement and the latter party refused to do so and was killed, the former, since he had accomplished more than his purpose, won the fight; but, since this purpose had not been attained, it should be expressly decreed that his opponent died with honor. Third, a man might both gain his cause and conquer the opponent's person; this was the case when the loser recanted and either surrendered or was wounded mortally. Finally, there might be no victory, either as to the quarrel or as to the person; although there was an opinion that the quarrel could not be settled without a decision in favor of one of the

parties, some held that the judge might avoid this by making peace between them on the ground that both had shown courage.[106]

This reconciliation, like the previously mentioned renunciation of the duel just after the parties had entered the field, required the consent of the judge.[107]* He could hardly grant it if the duel had been regarded as unavoidable; in fact, it was doubtful whether an honorable reconciliation could take place on the field. At any rate, the judge should not allow the peacemaking if the duel was fought by substitutes.[108]

The decision as to the result of a duel was formally written, was signed by the judge, and it might be certified by a notary. Its declaration of the cause of the quarrel must conform to the statement given in the challenge; and the document must recount the details of the combat, such as the description of the wounds, and the manner in which the winner obtained the victory. If the judge had stopped the duel because the parties had done their best, he stated, when the nature of the quarrel permitted, that each had preserved his honor. With regard to the duel fought on horseback, one of the writers ironically remarked that, if victory had been gained without the exercise of the winner's *virtù*, the award ought to be made to his horse.[109]

From the judge's decision there could generally be no appeal. Some, however, thought that a party might appeal as to technicalities which had arisen before the duel;[110] and one opinion was that, since the justice of the victorious cause was only presumed, there might be an appeal from the decision if the losing party was afterward found to have been in the right.[111] But for the average loser there was no possibility of appeal except to his own conscience. In this connection one of the writers quoted the stoical remark of Lucan: "The victorious cause was favored by the gods, but the cause that was conquered pleased Cato."[112]†

* Baldo had said that unless with the judge's permission there could be no reconciliation if the parties had agreed to fight to the finish, since such a duel had a serious cause (Marozzo, 99).

† "Victrix causa diis placuit, sed victa Catoni" (*Pharsalia* i. 128).

CHAPTER V

THE RESULTS

THE defeated party, if he had been the challenger, might be required to pay a fine; and whether he had been the challenger or not, and even if his ruler had pardoned him for an offense which had been the cause of the duel, he might be liable for the expenses incurred by the winner.* But the latter penalty, at least, seems to have been practically obsolete by the middle of the sixteenth century; although one authority mentioned it as a possibility, another said that the custom was rather plebeian and was observed no longer.[1]

As for the victor, he was brought home to the accompaniment of trumpets and other instruments, songs, and various other expressions of joy,[2] and he might seize as tangible awards certain articles of the loser's property. His right to receive the latter, however, was doubtful;[3] at any rate, if a man was killed in a duel and it was afterward found that his cause had been just, the goods must be restored and given to his heirs.[4]

But, in general, the authorities on the duel said that spoils fell to the victor by right, and opinions differed only as to which ones should be appropriated. Some held that these were the loser's arms, banner, saddles, horses, and fine clothing.[5] Fausto da Longiano (1551), noting that formerly the winner adopted the loser's coat of arms and took possession of his weapons, horses, etc., said that, at the time when he was writing, the winner seized only the weapons. These he hung up in churches.[6] Pigna (1554) remarked that, if as a result of the duel the loser died, the winner received all the spoils; but, if the loser survived, the winner took only his arms.[7] According to one opinion, a man who had killed his opponent might take the arms and thereby both deprive the opponent of honor and reimburse

* Lignano had said that these two penalties were obligatory (*De duello*, 284; G. Ferretti, 311).

himself for the expenses of the duel; but as to his appropriating the clothing, etc., which the deceased had at the dueling-field, this, although it might be permissible by custom, did not seem magnanimous.[8] Another, however, held that, as in war, the winner was entitled to all that the loser had carried to the field.[9]

With regard to the duel as a source of financial profit, there arose the question whether a man should be the beneficiary if he killed in a duel a bandit for whose death there was offered a reward. One opinion was that, if the victor did not know that his opponent was a bandit, he deserved no credit; and, if he did know it, he should not have fought with a man destitute of honor. At any rate, he killed him less for the good of the state than for his own defense.[10]

A surviving loser might be compelled not only to yield to his opponent the above-mentioned property but also to become the opponent's prisoner.[11]* He was freed, however, if the victor declared that he did not wish to hold him captive,[12] or if a challenged party had won simply by remaining unconquered until the end of the day.[13] But otherwise the loser remained captive even if the victor kissed and embraced him. This was similar to the case of a servant, whose status was not changed if his master merely called him a freeman. Such acts or words had no greater force than the courteous expression, "All that is mine is yours." A further analogy was the fact that, if a man was excommunicated, he was not freed from the ban because the pope kissed him or, in writing to him, addressed him by his title.[14]

If held a prisoner, the loser was obliged to perform services which were knightly and to give to his captor proper obedience and respect;[15] and the captive, in turn, should be treated with consideration. Although he might be kept under guard, he was given a private prison.[16] That the captivity was not slavery,†

* Under the law of the Lombards, by which the loser of a judicial duel was punished legally, he did not become the prisoner of his opponent (Muzio, *Duello*, 67; Sacco, 97v).

† But it had been virtually so until after the middle of the fifteenth century. According to the previously mentioned story of the defeated duelist who was given to the canons of St. Peter's at Rome (p. xxv, n.*), they kept him occupied in sweeping the church floor (Brantôme, VI, 251; Maffei, 180).

moreover, appears from the fact that, aside from the above-mentioned matter of the victor's spoils, the defeated party could retain his property; and it was generally accepted that he could bequeath it by making a will.[17]* Giulio Landi (1564) said that one who surrendered in a duel would certainly not be made a slave or servant.[18] In fact, public opinion generally prohibited holding in slavery, even by mutual agreement, a fellow-Christian.[19] A man who had been taken captive in a duel, furthermore, could justly escape if he was forced to do work which was menial.[20]† But one of the writers noted the inconsistency of exempting from menial labor one who had lost his honor.[21]

There arose the question whether the prisoner could be given to a party other than his captor. The latter, according to some of the writers, could not, without the consent of the captive, transfer him to one of equal or lower rank than the captor but only to one whose rank was higher; and in the middle of the sixteenth century, although the victor could if he desired retain his captive, the latter was regularly given to the ruler, or to the lord who had granted the dueling-field.[22] In case the prisoner was ransomed, a process which will be discussed later, a third party who had paid the ransom to the captor might himself hold the captive as prisoner until the said third party was reimbursed.[23] But a writer in the first quarter of the century remarked that the loser in a duel rather than become the prisoner of another than his conquerer would perhaps allow himself to be killed;[24] the victory was strictly personal.[25]

At any rate, the captive must not be sold. He was not merchandise,‡ and knighthood forbade selling even one's self.[26] A father was prohibited from selling his son, moreover, unless in case of dire poverty, and with the son's consent; and it was considered still more objectionable that the winner of a duel should so dispose of his captive.[27]

One of the ways in which the prisoner might be transferred to

* This had been noted by Baldo (Marozzo, 115; G. Ferretti, 311).

† It was considered sinful, on the other hand, to escape from prison after having been condemned to death by the law (Puteo, 149v; Marozzo, 113v).

‡ The statement had been made by Baldo (Marozzo, 114v).

a third party was by means of inheritance.[28] It might be supposed that the captor's eldest son, for example, since he must pay his deceased father's debts, should inherit also his assets, especially those which had been acquired at the greatest risk and without usury; and the fact that the glory of father and son cannot be separated was supposed to be indicated by the words of Christ, "He that hath seen me hath seen the Father."* The attitude of one of the writers, however, with regard to the justice of this form of inheritance, was noncommittal; the custom was elsewhere opposed not only because the victory of a duelist was personal, and the captive was not a servant, but also because the victor's sons might be fools;[29] and by the middle of the sixteenth century the practice of inheriting the captives had become extinct.[30] So they became free when their captors died.

Like prisoners of war, moreover, the captives might gain their freedom by paying ransom. This was sometimes demanded under color of the expenses of the duel, and the captive was compelled to pay at least this amount. If during his captivity he became richer, the ransom nevertheless must be based on his financial condition when he was taken prisoner. A third party, furthermore, who had succeeded to the possession of the captive by means of paying his ransom could not increase it; and, if it was not repaid within five years, the captive then went free and was not bound to pay the expenses which had been incurred for his keep.[31]

Sometimes a captured duelist was released on his promise to return when summoned. He might be called upon, for example, to defend his captor against an enemy.[32] Unless the captor was a traitor to his country, or was excommunicated, the obligation to obey his summons would not be lessened by the fact that he was a lord to whom the captive was not regularly subject. Except when prevented by his duty to his own lord, moreover, the paroled prisoner must, according to one theory of knighthood, obey the summons even though his promise had been given through fear, or he had been made captive unjustly.[33] If

* John 14:9.

he should seek to break his word by denying that he had been defeated in the duel, his captor could challenge him to a second one, but this situation ought to be avoided by a requirement that the result of duels should be certified by notaries.[34] The paroled prisoner's obligation, furthermore, was binding as long as he lived; unless, as was thought by some writers, he became free if he had not been summoned within thirty years.[35]

There were authorities, however, who declared that the paroled captive was not obliged to return if his capture had been unjust, if its justice was doubtful, or if the captor was an enemy of the state.* They believed that in these cases, even if the captive's promise was sealed by an oath, this was no more binding than if the captor were a brigand.[36] Since the oath was presumed to have been given through fear, moreover, and since an oath contrary to good usage or the public welfare carried no obligation whatever, one was not bound to observe it in the following cases:

First, if the captor had sought to get from his prisoner money in excess of the ransom. Second, when the observance of the promise was contrary to the public interest; this was like the case of a promise to surrender a fort which had been intrusted to one's good faith. Third, when the captor was excommunicated or banished; breaking faith with such a person was regarded as commendable shrewdness.[37]

Some held that the paroled prisoner might justly refuse to return because of either the conduct of his captor or a legitimate hindrance to himself. The former case occurred not only if the captor was excommunicated, etc., but also if after the parole a mortal enmity had arisen between the two parties, if the captor was in the company of the captive's enemies, or if he had treated the captive badly or had demanded too high a ransom. But, in the case last mentioned, the paroled captive must pay that which was proper. As for legitimate hindrances to himself, he might be prevented by war or imprisonment, the road over which he must pass might be unsafe, or traveling might be impossible because of a storm, etc. But he must return after such

* This last condition had been stated by Baldo (Marozzo, 113v).

hindrances had ceased. In any case, his nonappearance must not be due to procrastination or fraud.[38]

There were diverse opinions as to the duty of one who while on parole had been raised to a position of high rank. Some said that to return to his captor would not be in keeping with his new dignity.[39]* According to one view, however, he could return or not as he pleased; but, at any rate, he should pay the expenses which had been incurred because of the duel.[40]

A further problem arose when a man, having been defeated in two duels and paroled by his captors, was summoned by both at the same time. His first captor could not have given him permission to become a challenger,[41] to be sure, but only to fight if he was challenged. In this case if he was again defeated and released on parole, and was afterward summoned by both captors simultaneously, he must decide as to which one he should obey. Each of the alternatives was supported by analogies. On the one hand, he should obey the first captor, on the same principle by which one must first pay a prior creditor, the oldest son inherits an estate, and the first marriage is the valid one in a case of bigamy. On the other hand, the principle of priority might be inapplicable by analogy with the facts that, if a testator has made more than one will, the valid document is that the date of which is the latest; and, if borrowed money is lost in gambling, the actual loser is the lender, not the gambler, who possessed the money later. The second captor should be obeyed also because the first had waived his right by permitting the second duel and because, since the experience of the first duel had increased the captive's skill, the second captor, as compared with the first, had been exposed to greater danger.[42]

A variation from the foregoing case appeared when the simultaneous summonses were issued not by two captors but by a captor and the paroled prisoner's lord. If the latter demanded a service which was important, as a general principle the captive should obey him; for a man's duty to his lord was one of his four

* An example of the necessity of maintaining the dignity of one's rank occurred in the case of Cincinnatus. Messengers had been sent by the Roman senate to announce to him that he had been made dictator; but when they found him plowing, barefooted and dusty, they would not deliver their message until he had put on other clothing (Mantova, *Dialogo*, 57).

principal obligations, the others being those to his country, to the church, and to God.[43] But, if the duel had been fought with the lord's permission, one should obey the summons of the captor.[44]

By the middle of the sixteenth century there had arisen prejudice against the winner's subjecting the loser to any kind of captivity. Hence the most distinguished soldiers after winning duels set their opponents free,[45] and it was regarded as proper that they should do this immediately and courteously.[46] To make the loser a prisoner gave to the captor no honor and was considered as reprehensible as to attack a man who was dead: if in the fight the loser had done his best, the winner should become his friend; and if the defeated party had not put forth his best efforts, the other should simply refuse to associate with him, or to contend with him in another duel.[47] One of the writers noted that the purpose of a duel was not to decide which party should serve the other.[48] By the time of the book of Urrea (1566), the winner always freely released his opponent at the request of those in authority;[49] Conrado (1574) said that the loser was not imprisoned or otherwise punished unless the duel had been caused by his being accused of a very grave capital crime;[50] and, according to Torelli (1596), holding the loser as a captive was contrary to the duty of a knight, who ought to seek not material advantage but honor.[51]

More important was the question whether a defeated duelist lost his honor irrevocably and so could not fight again. He could not do so, at any rate, without the consent of his previous conqueror.[52] But his dishonor was not heritable to the extent that it prevented the fighting of duels by his sons;[53] and some held that he himself should be given further opportunity: he might win because of his increased experience; and, proverbially, one who sleeps is not dead.[54] Many losers received greater praise, moreover, than did the winners. According to one of the writers, there were abundant examples of the fact that losers might not only wipe out their disgrace but also obtain from their fellow-countrymen the greatest glory, and another encouraged a certain defeated party by predicting that the loss of the duel would be a goad to urge him to acquire immortal

fame.[55]* One authority even declared that the loser might resent the decision by challenging the judge,† and that the latter must accept the challenge, whatever might be his rank.[56] Another writer held that future duels should not be prohibited to men who had lost because, for example, they had touched the boundary of the field or been pushed outside it; had suffered an accident; had through the negligence of their seconds used unsuitable weapons; or if, being the challengers, they had failed to conquer by the end of the day: defeat from such causes did not destroy honor.[57] Still another said that this could be restored by the emperor or the pope.[58]

This question as to the loser's privilege of fighting again might depend upon whether for the subsequent duel he was the challenger. At any rate, he could not assume this role unless he had lost by accident or other chance[59] (a statement which doubtless afforded a considerable loophole); and some said that, if he was the challenger, he was absolutely debarred by the laws of knighthood.[60] One authority, however, held that he might be the challenger if the cause was different from that of the former duel.[61] If he was the party who had been challenged, moreover, he might undertake the subsequent duel if it was not to be a fight to the finish.[62]

But some were opposed to any loser's engaging in another duel, for they believed that his honor was lost forever. So they held that it could not be restored by the winner, or by a king or the pope. The loser would not regain it, moreover, even if in a subsequent duel he should obtain the victory; although he deserved credit for having suffered the perils of duels, and although fortune is sometimes the enemy of good men, yet the idea of his being sometimes the loser and sometimes the winner appeared ridiculous. It could be presumed, also, that, if in the subsequent duel he should be too hard pressed, he would surrender; for, having been already defeated, he would have noth-

* A certain Cesare of Naples, who had lost a duel, afterward so fought in war that his glory obscured that of the duelist who had defeated him (A. Landi, 26).

† This seems to have been a survival from the days of the judicial duel, when in some countries defendants who asserted that they had been condemned unjustly were permitted to challenge their legal judges (Levi, 125, 134).

ing to lose.[63] If he should be defeated again, furthermore, this might nullify the victory of the first winner. Such would be the case if at the time of the former duel the loser had already agreed to fight in the latter one.[64]

There arose also the question whether permission to fight a duel should be granted to one who on a previous occasion had been declared to be the loser because, as a result of inexperience, he had refused to fight. One opinion was that he should not be debarred if he paid the expenses incident to the former duel; and, if he had renounced that combat for the reason that his cause was unjust, he was not infamous and hence should be treated with more consideration than if he had fought and been conquered.[65]

There seems to have been no fixed rule regarding the fighting of a later duel by a defeated substitute. According to one view, he could not do so for a cause of his own. Another opinion, however, was that he could fight for himself but not for others.[66]

The prohibition of subsequent combats did not apply to a loser who had fought merely in order to carry out a vow, for adventure, to display valor, or because of a love affair, etc. As has been noted, such contests might be other than true duels of honor.[67]*

The most important result of a duel, finally, according to its advocates, was the revelation of the truth. But one may perhaps wonder how often by this method the truth was revealed more clearly, or the parties were impelled by deeper convictions, than in the several combats which a certain gentleman of Naples is said to have fought in order to prove that Tasso was a greater poet than Ariosto; at last he exclaimed when wounded mortally, "And to think that I have never read either one!"[68]†

* P. 71.

† According to what was probably a version of the same story, eighteen duels, which took place at Ferrara, were fought by a man who thus sought to maintain that Ariosto was superior to Tasso (Gelli, *Duelli celebri*, 18). A speaker in the dialogue of Francesco Ferretti, moreover, told of a duel which he fought at Pesaro. He had received a challenge the cause of which he did not know, and his opponent was a man whom he had greatly befriended. The challenger, it appears, managed to obtain the choice of arms, which were sword and cloak, and the other party was thereby at a disadvantage. The duel took place without any delay, and both were wounded (F. Ferretti, 60).

PART II

THE STATUS OF THE DUEL

CHAPTER VI

REASON

THE writers who discussed the duel were not ignorant of logic, nor were they generally indifferent to the demands of ethics. Many of them said that the duel was opposed by all laws, natural, human, and divine,[1] and hence was essentially unreasonable.* So the fact that a man had offended the prince or the country, or that one person was superior to another, could no more be proved by a duel than could one's surpassing an opponent in running or in drinking;[2] it was evident that to fight in order to reveal truth or to prove innocence was vain; the desire to teach men to engage in duels reasonably was sheer madness;[3] and to seek such a judgment was like asking justice from the wind.[4] One of the writers ironically asked whether physicians, if they disagreed, should fight a duel to determine what should be the patient's medicine.[5]

The duel was regarded as illogical, in the first place, because the instruments of proof were arms, which signify only violence. To "conquer with arms in hand" had no connection, for example, with the question whether one was an adulterer or a traitor.[6] Violence is proper to wild beasts, and in the ability to use it they are superior to men: not only has nature made the latter physically unequal among themselves but it has not given to them, as to the beasts, hard skin, horns, claws, or swift feet; and, since a man stands erect, he exposes to assaults the breast and the abdomen, in which the wounds are the most difficult to heal. On the other hand, men can protect themselves by erecting walls and by enacting laws. All these facts show that man was intended to settle his differences not by fighting but by reason. This, which is the source of peace, is the cause of man's superiority.[7]

* Lignano had said that, although it was caused by man's natural disposition, it was opposed by his natural intelligence (*De duello*, 281v).

Some held, moreover, that fighting otherwise than in defense is contrary to the law of nature.[8] They believed that all creatures strive for the preservation of their own species[9] and that noble animals, such as lions, are friendly to one another.[10]

There was also appeal to the authority of the ancients. Aristotle held that equity should not be sought by the use of force.[11] Alexander the Great said that the best ruler is one who makes peace with his enemies and wins them by helping them; and, according to one opinion, this statement was incompatible with the belief that the most admirable man was he who provoked another to a combat, and therein butchered and mangled him.[12] Some noted that the duel neither was derived from nature nor was a universal custom, since the ancients did not use it.[13] Several writers cited the conduct of Marius and of Octavius: the former, having been challenged by a chief of the barbarians, replied that if the latter wished to die he could hang himself; and Octavius, refusing the challenge of Mark Antony, said that his opponent was free to follow many other paths to death. Scipio Africanus, moreover, remarked that his mother had borne him to be not a fighter but an emperor.[14]

The duel was called unreasonable, furthermore, because its judgment was unreliable and sometimes self-contradictory. The theory that it revealed the truth was belied by the fact that the quarrel which led to the duel might be so changed by giving the lie, dealing blows,* etc., that there was doubt as to what was the question concerning which the truth was sought; and, even when this matter was clear, proof was sometimes impossible. How could a duel reveal the truth, for example, when, because a man had asserted that all of a certain nation were traitors, he must fight them one by one until he was conquered?[15] Since the result of a duel might be determined by either death or capture, moreover, what issue was settled if a party after having taken his opponent prisoner died from wounds?[16] The fact was that in a duel something that was certain was to be proved by means that were uncertain, or an uncertainty was to be made clear by something equally uncertain or more so. Hence the

* Bryson, 51.

proof was almost as doubtful as if it depended entirely on chance.[17]

One of the writers noted that, although by the duel men were threatened with the judgment of God, this did not prevent them from giving insults. Since misdeeds such as the oppression of widows and orphans, furthermore, occurred in spite of laws both human and divine, why should one be deterred from evil by the prospect of a duel?[18] On the contrary, the duel gave to an offender an opportunity to prove his case after he had given an insult already. This was a great injustice to the party who had been offended: when he had restored his honor, by giving the lie, in the duel he had nothing to gain; whereas the offender, whose honor the *mentita* had compromised, had nothing to lose.[19] According to one writer, moreover, giving an insult was itself dishonorable; since the offender was therefore incapable of destroying the honor of another, he should be considered ineligible for the duel.[20]

The duel was illogical also with regard to certain details. It was generally agreed that it was unreasonable for a duelist to fight in order that his lord should give him an honorable position,[21] and some rejected the theory that these combats were obligatory upon soldiers. Dueling by the latter, in fact, was especially objectionable; since military life creates a spirit which is bold and proud, soldiers more than others need strict discipline. Obedience, which should be practiced in time of peace, is imperative in war; a soldier is not allowed to fight even against a public enemy except by permission. The necessity for this rule is evident; if for the sake of fighting duels soldiers should, for example, leave a besieged city, those who did so might be so numerous that the city would be captured. Among the ancient Greeks and Romans, moreover, punishment was given to a soldier who, after having been ordered to retreat, without the permission of his commander killed one of the enemy;* and it was a much more serious offense to fight without permission a duel with a fellow-countryman.[22] It was unreasonable, further-

* Roman soldiers who had been released from the military oath were subject to the same laws and magistrates as were the other citizens (Nobili, 16).

more, to allow soldiers to engage in the duel on the theory that they would be fairly matched; any duelist might be put at a disadvantage by even a slight detail, such as the fact that his eyes were dazzled by the sun.[23]

Others held that, if duels were permissible, it was illogical to exempt men who were scholars.* Although they might be physically weak and inexpert with arms, they were not free from the obligation to fight for their country, and it was still more important that they should defend their honor.[24] The theory that the duel was permissible for all honorable men, moreover, made scholars definitely eligible, since they undoubtedly constituted a very honorable class. Their exemption also ignored the theory that the duel was a judgment of God.[25]

One of the writers assailed both the duel itself and its votaries. He held that it was childish to call it the prerogative of honorable knights: it gave rise to more evils than it prevented; it could not be classed with war, which is permitted by the Christian religion; and it did not regain honor but destroyed it. Even if it were true, moreover, that the duel existed only for men of honor, either this principle was generally unknown or it was ignored. At any rate, some duelists found no pleasure in virtue but acted against the principles of the true military profession and of knighthood: they talked foolishly, especially when they ridiculed the opinion of those who tried to persuade them to follow reason and duty; and they lived utterly devoid of prudence. In short, their lives were inglorious because they were not masters of themselves.[26]

Yet in the field of reason the duel had its defenders. They said, first of all, that it was in accordance with nature, which permits self-defense,† and that among men this may take the form of resentment of insults. In the next place, they asserted that the principles upon which the duel was based had been held by the ancients. Aristotle, for example, had noted that

* Bryson, 33.

† Lignano had described natural law as a certain innate force procreating things from what is like them and always striving for their preservation. So all creatures make use of self-defense. As for man, however, natural law may be limited by custom, civil law, or canon law (*De bello*, 379–79v).

not all proof requires logical demonstration.[27] As for the objection that the ancients did not advocate the duel of honor, the reply was that since their days the world had progressed.[28] The justice of Aristotle's remark, moreover, appears from the fact that with the exception of mathematics, all sciences, including jurisprudence, are sometimes defective. So if for this reason one ought to do away with the duel, one should abolish also the law.

The supporters of the duel held, furthermore, that it had positive value. They said that the fear of it often prevented insults and that, when a duel took place, its result was generally definite: as a rule, one of the parties was the winner. Wounds and death, remarked an authority, are self-evident.[29]

Some noted the pleasure, also, which duels gave to the spectators.* As they contemplated the exhibition of skill and fortitude, said Cottereau, they were suffused with delight. What could be greater enjoyment, he asked, than to sit free from all danger and watch two opposing blades?[30] This, however, was the utterance of a foreigner; such gusto does not appear to have been expressed by the writers who were Italians.

There was no general agreement as to the extent to which the question of dueling was in the domain of ethics. One writer said that it is necessary to study this science in order to know what is honorable, to realize the power and effects of human passions, and to learn how to modify them; but not in order to decide technical matters concerning duels. He added that these combats would cease or become very rare if everyone were governed by ethics, which teaches that an honorable man cannot be insulted; but this principle was entirely rejected in the code of honor.[31]† Another opinion was that the duel was not in the field of ethics because the former was unjust and because the latter is concerned with the means of attaining happiness.[32]

Others, however, emphasized the duel as a matter of ethics. They said that the combat itself, to be sure, should be discussed by the authorities on the art of using arms, but it pertained to

* As a feature which rendered the duel more tolerable, this had been mentioned by Lignano (*De duello*, 282).

† Bryson, 36, 46.

the science of ethics to treat of that which gave rise to duels of honor, namely, insults.[33] So dueling was a question of morals in so far as it was concerned with defending honor.[34]

Some were opposed to the principle of resentment. In the first place, they appealed to the authority of Aristotle; although he held that an honorable man will not suffer himself or those with whom he is in close relations to be treated contemptuously, he here spoke not as a philosopher but in accordance with popular opinion, and he also said that a magnanimous man does not notice or remember injuries. It did not follow, moreover, that the resentment which he seemed to approve should be exercised through the duel rather than the law.[35]* The latter is offended by extralegal revenge, even if this inflicts no actual injury.[36] One of the writers said that, if a man breaks his word, and there are no witnesses to testify against him, it is clear not only to Christians but even to barbarians and pagans that, if he cannot be moved by reason, he should be left to his own consciousness of his infamy.[37] Another opinion, to be sure, was that, by a principle derived from nature and acknowledged by the law, resentment was permissible provided that it was immediate;[38]† but, according to one writer, vengeance is esteemed only by the ignorant and the dishonorable.[39]

As for the duel, even some of those who defended it admitted that it was essentially evil.[40] Others held that it caused the death of many who were innocent[41] and that it was not permissible even between men of different nations. In this case the offended party could be avenged by his own prince; or, if this was not possible, he should avenge himself "in a good manner": no offense was worth an enemy's life.[42] Many believed, furthermore, that the lords who granted fields for duels were even greater offenders than were the duelists themselves.[43] This statement was qualified, however, by the suggestion that a lord was guilty of homicide only if he granted a field for a duel which was unjust.[44]

To the assertion that the duel expressed the two cardinal

* *Ibid.*, 43–44. † *Ibid.*, 48.

qualities of knighthood, justice and valor, the reply was that this institution could not be the instrument of any virtue.[45] As for justice, the fear of being thought a coward might cause the challenged party to admit offenses of which he was innocent.[46] According to one writer, few duelists or none had been just; at any rate, it is unjust to act contrary to the law.[47] As for valor, a celebrated authority said that a man's courage deserts him if his cause is unjust; whereupon another remarked that, since in the duel injustice was inherent, fear was in the hearts of all duelists. Hence to characterize the duel as proper for knights, he added, was an attempt to make a dishonorable thing honorable by painting it.[48] Still others held that it was better to be timid than to risk one's self in a duel; courage could be shown on later occasions,* and timidity was preferable to rashness.[49]

The real motives of duelists, moreover, might be other than those which they asserted. For example, they might fight only in order to kill their enemies without receiving penalties.[50] Duelists of an inferior class, furthermore, might be impelled by the desire for preferment, and some lords gave them honorable positions in order that they might minister to the lords' vices.† At any rate, the opponents of the duel held that it was a wrong method not only of obtaining honors but also of keeping them; a man's success should be due only to his virtue.

One of the writers depicted the entrance of the parties upon the dueling-field. Haughty and puffed up with vain and frivolous pride at seeing themselves escorted by so many friends, relatives, and noblemen, with much display and to the accompaniment of drums and trumpets, with long strides they passed through the field. Here they might soon suffer a cruel death, which would give them little honor and much shame, would benefit neither their country nor their prince, and might bring

* Demosthenes (perhaps the Athenian general), having fled and thrown away his shield, excused himself with the remark that one who runs away can fight at another time (A. Landi, 25).

† The French theologian Jean Charlier de Gerson (1363–1429) had said that the motive of some duelists was ambition, and of others it was avarice. The former wished to be called strong and valiant; as for the others, many of them had been made rich by certain vain and foolish princes (Massa, 18v).

ruin upon their families. Worst of all, they risked the loss of their souls.[51]

There were answers also to that which was perhaps the most effective argument for the duel; namely, that it was approved by public opinion. Some held that custom must not be preferred to human and divine law.[52] They noted, furthermore, that the duelist did not receive the praise which was founded on virtue; he was not lauded by the judicious. This was because he preferred the approval of the rabble; he risked his life unnecessarily; and, if he was killed, he lost body, soul, and honor.[53] So one must not yield to perverse public opinion; if a community was hopelessly evil, an honorable man ought to leave it.[54]

Even those who regarded the duel with more or less favor, moreover, could not deny its abuses. According to one statement, most quarrels arose from gambling, or from disputes about women or dogs;[55] and such dissensions sometimes led to duels.* A man could hardly speak without having his words taken amiss because their meaning was distorted, and men killed one another because they regarded punctilios as more important than the truth.[56] It was almost impossible, furthermore, that questions concerning the duel should be decided by sound judgment, for there were lacking both good judges and fixed rules.[57]

At any rate, some held that ethics imposed upon the duel certain restrictions. One opinion was that, although for self-defense a challenge might be accepted, one was not justified in being the challenger.[58] As for military commanders by whom duels were granted, they should allow only combats which were necessary, or were for the advantage of the army, etc.; they should prohibit those which were merely the result of braggadocio.[59]†

In contrast with these various criticisms, even from the standpoint of ethics the duel had its defenders. In the first place,

* At Ferrara, for example, a man was challenged to a duel because he had shown contempt for another's dog (Catalano, *Vita di Ludovico Ariosto*, 267, n. 22).

† According to Mora, permission to fight duels should not be granted to wretched little fellows (*homicioli*) who, try as they might, could not even make a frog jump into the water (Mora, 134).

some indorsed it as a form of resentment. They said that not those who endured offenses but those who resented them were courageous, and that a soldier worthy of the name could not tolerate them if he held with the philosophers that nothing in life is a greater evil than dishonor. Hence men praised famous historical characters who had overcome their enemies in single combat.[60] The Christian injunction to practice forgiveness, moreover, was supposed to be contrary to nature. The advocates of the duel held, furthermore, that it enabled men to have their rights and impelled them to keep their promises; since its theory was the same as that of war, it could be just; and the formal duel, which prevented evils that were greater, in effect was therefore good.[61]

One of these greater evils was the fight *alla macchia*,[62]* and another was assassination; a writer cited with approval the statement of Johann Faber (or "Fabri") that worse evils would be avoided if a poor man who was in fear of one who was rich should resort to the duel instead of killing his enemy secretly. So those who prohibited duels, which were often fought in behalf of innocence and honor, did not understand what was expedient for commonwealths; at any rate, the duel should be permitted in all cases in which justice could not be obtained from magistrates.[63]† According to another writer, the fact that the lesser evil becomes by comparison something which is good rests upon the law of nature and was held by Aristotle. So the duel, like the amputation of a diseased limb, was an evil which was necessary.

This argument seemed to have a special application to the "state" duel. Although a duel was evil even when confined to two individuals, this was better than endangering the peace of a whole community by a struggle between factions.[64] When used by soldiers who were on opposing sides in war, the duel was considered praiseworthy and glorious if it was fought for the public welfare. So it was thought excellent for emperors and military commanders to have in their armies some strong and strenuous men, such as had been the Curii, who should be ready

* P. xxiv. † Bryson, 75–80.

to frighten the enemy by means of valor shown in duels.[65] One of the writers held that the action of a king of England in challenging his vassal, a king of Scotland, rather than subjecting their followers to war was admirable: it was a return to the golden age.[66]

The obligation to fight for what duelists called "honor," moreover, might even excuse violation of ethics by the use of falsehood. According to one opinion, the duty of defending one's honor was so fundamental that, if a man had been permitted to fight a duel only on condition that he should give a certain promise, he might rightly break his word.[67] Thus there is the parodox that in such a case one was justified in lying, in spite of the fact that the accusation of having done so constituted the greatest of all offenses against one's honor* and was usually the cause of the duel itself.

There was difference of opinion as to whether it was a man's duty to obey if his participation in a duel was forbidden by his father or other relative. One statement was that, although by the ancient laws of the Romans the authority of the father was subordinate to that which the state exercised over its soldiers, yet filial obedience was commanded by God. But the right to prohibit one from fighting a duel did not extend to other relatives, unless both the opposing parties belonged to the same family.[68] According to another opinion, moreover, the duel could not be prohibited even by the father,[69]† who could no more do this than he could keep his son from going to war;[70] the authority of a father was not recognized by the sword and the dagger,[71] and his prohibition should not be obeyed. A man's participation in a duel could not be successfully opposed, furthermore, by his wife. One writer, however, said that possibly she might prevent the risking of her husband's life because of the words of the Bible, "What therefore God hath joined together, let not man put asunder."[72]‡

* *Ibid.*, 60.

† He had not possessed this authority under the law of the Lombards (G. Ferretti, 312).

‡ Matt. 19:6; Mark 10:9.

There arose also the question as to fighting a duel when this was prohibited by a lord or a military commander. On the one hand, there was the opinion that a lord could exercise such authority over his subjects and that the latter should not thwart his will by fighting the duel outside his jurisdiction. The same principle was applicable, moreover, if the parties to the duel were temporarily under the authority of a lord who was not their own. In any case, however, a man must fight the duel if the prohibition had been made at his request.[73]* As for a soldier, some of the writers said that, since a subject must follow his lord in war and a soldier must obey his commander, the duel should be postponed until after the war was ended, or until the would-be duelist was no longer under the lord's or the commander's authority. Then if the soldier had been the challenged party, his opponent should repeat the challenge.[74] In fact, fighting a duel without the commander's permission was regarded as an act of desertion; this was dishonorable and, if it necessitated going to the lines of the enemy, it was treason.[75]

On the other hand, some emphasized the cases in which the subject or the soldier might rightly disobey.† He must fight the duel if he had ceased to be under the lord's authority; or, if he was the party who had been challenged, and there was no urgent need of him for the public welfare. According to one writer, a man ignored the prohibition unless in behalf of his lord he was engaged in war; in this case he should postpone the duel until the war was over. A celebrated authority even held that if a soldier was in a besieged city, and was insulted by one of the enemy, the former should, in order to fight a duel, become a deserter by leaping from the walls.[76]

Above all, the defenders of the duel held that it promoted the

* Because a king had forbidden a certain proposed duel, one of the parties gave him thanks; therefore, according to public opinion, this party lost his cause (Puteo, 171v–72).

† The refusal to obey a lord who had forbidden the acceptance of a challenge was perhaps a survival from one class of tournaments; namely, those due to enmity. In some countries these had taken the place of the judicial duel, but they differed from the latter in that they resulted in no legal judgment. Hence to the votaries of the duel of honor, which was the successor of these tournaments, its code was more authoritative than the commands of rulers (Gierens, 191–92).

knightly virtues, justice and valor. The presence of the former was implied in the statement that the duel was ordained to punish vice and to exalt virtue and preserve honor by giving the proper rewards.[77] So, although the duel was by its nature evil, in some cases it could, to a certain extent, be just. Since it was in the same category as war, moreover, its purpose was the public welfare and justice, which was offended when one gave an insult.[78] The duel aided justice also by causing knights and captains to be feared and obeyed.[79]

As for valor, the duel was supposed to be an admirable combination of God's judgment and man's *virtù*. So a question which could not be decided by human means alone was committed to God and man together—to the latter for the act most natural to him, self-defense. The duel was helpful to a ruler, furthermore, by giving to his subjects that which the Romans received from the death of the gladiators, examples of courage; and these combats should sometimes be practiced even by military commanders in order to show that they governed and punished not because of their authority but because of their valor and other merits.[80]

Even among those who regarded the duel as unreasonable, there was no general agreement as to how it could be abolished. One opinion was that, since an insult in the presence of the prince was an offense to him,* and since his authority extended to all places in his country, an insult anywhere within it should be regarded as if it were given in his presence; and, as a man is always in the presence of God, so he is always in the presence of the law.[81] Another suggestion was that the lords, leaving lesser offenses to the magistrates, should judge serious ones personally.[82]† According to still another view, the prince should decree that not the one unjustly offended but the other party would be dishonored; that he not only would be forever incapable of receiving any kind of honors but also would be permanently banished; and that the same penalties would be inflicted upon

* Bryson, 61, 65.

† This system was supposed to have been that of Romulus (Giraldi, *Ecatommiti*, Deca X, nov. 8).

all who aided or counseled him. It was useless, however, to punish duelists with loss of property and life; for some would think that incurring this risk indicated bravery, those without property would provoke to duels men who had something to lose, and injury would be given to the participants' innocent families. What was necessary, finally, was to change public opinion.[83]

Certain writers who believed that the duel could not be abolished[84] thought that it could be reformed. But some of the proposed methods were rather vague. One was that a duel should not be allowed unless its cause was a scandal so great that the accused party could not appear with honor before knights.[85] The violation of law, moreover, must be reduced to a minimum; hence the duel should be limited, and its regulations should be interpreted strictly.[86] One of the writers said that those who had authority over the duel should overlook the lesser abuses, although they were un-Christian, and should reform those which were greatest.[87] Another opinion was that, if because of the reputation of the duel with the rabble the princes could not prohibit it entirely, they should at least settle the quarrels for which it seemed unreasonable, make for it infallible laws, avoid the vain pomp and great expense, and remedy the squabbling of the seconds (*padrini*).[88] In short, although the duel was *disonesto*, it ought to be fought as honorably as possible.[89]

Other proposals were more specific. Some authorities wished, for example, that the duel should be permitted only when it was due to such causes as an accusation of treason.[90] Another proposed reform was with regard to the manner of choosing the arms. In the first place, some held that they should be selected by the challenger. The reasons were that, since the duel was a method of giving proof, the arms should be chosen by the party by whom the proof must be made; and, although the possibility of a duel was supposed to be a protection against insults, under the existing system many gave them for the specific purpose of securing the choice of arms by being challenged. Since the duel was therefore a terror to the party who had been offended, it

caused worse evils than it prevented; one might as well be judged by a tyrant.[91] According to another view, the choice of arms should be given to neither of the parties. One theory was that, as had occurred in the past, the selection should be made by the lord who had granted the field. At any rate, it was unjust that only one of the contestants should have the opportunity to practice with the weapon before the fight. This unfairness was especially apparent when the parties were of different nations. Each of these had special weapons with which its fighters were most expert; so a German or a Swiss, for example, would prefer the pike, and an Italian or a Spaniard would choose sword, dagger, or arquebus.[92]

The question of reforming the duel was discussed at some length by Muzio, who with regard to the code of honor was probably the chief authority of the century.* Starting with the premise that, although the duel was contrary to both imperial and Christian law, it was useless for him to oppose it and it would be wrong for princes to prohibit it, he held that they should require that notice of a duel be given a sufficient time in advance. If then the quarrel could be settled without resort to arms, the prince ought to punish with great severity the party who had offended and refused to give proper satisfaction.[93] In a statement made to the Emperor Charles V, moreover, Muzio declared that before a lord granted permission for a duel he should have the case examined legally. He might then permit the combat if the court had officially found a reasonable indication of guilt, if this presumption did not extend to proof, and if the offense was of the class which carried the penalty of death. The duel should not be allowed, therefore, for such offenses as giving the lie. In the case of double offenses, furthermore, one should consider only the first, and it made no difference whether or not both had been given by the same party. So whether one had offered an insult and the other had given the lie, or whether one had called the other a traitor and then, in order to become the party challenged, had followed up the

* Bryson, 102–3.

words by giving a beating, in either case the second offense should be ignored.[94]

Still another reform was suggested in the book of the Spaniard Urrea. This was that there should be established by the king of Spain, in each of the principal places in Italy, a tribunal of honor.* The judges should consist of prominent knights who were experienced in arms. A gentleman who made against another an accusation which would lead to a duel must appear before this tribunal, else he should be considered a rebel and a traitor. The judges should next summon the accused, whatever might be his rank or nationality. If he should not appear within the appointed time, then just as if he had fought a duel and been defeated, he should be declared to have lost his cause. For those in military service, there should be a similar tribunal, consisting of the captain-general and knights. If after both parties had appeared, the judges should find the case to be so grave or so obscure that they could not decide, as a last resort they should allow the accuser to appeal to the duel.[95]

From the various opinions which have been noted, it appears that the defenders of the duel, as well as its opponents, did not lack arguments. But, as was remarked in the book of Zanchus, the theories of man, mixed as they are with passions, do not represent true reason, which is identical with the will of God.[96]

* In France such tribunals had arisen under Louis XII (1498–1515) and Francis I (1515–47) (Coelli, 22).

CHAPTER VII

LAW

ALL questions concerning the duel were supposed to be decided according to laws;[1] and the duel of honor, like the former legal judicial duel, was often discussed as to its relation to the law of the state. Some, to be sure, said that, when lawyers treated of the duel, they did so not as members of their profession but as moralists; as lawyers, they were concerned only with certain minor details, the rest being matters of ethics. It was in the latter field, then, that one discussed the duel as to its purpose and some of its rules; as for the law, it was the means by which one approached ethics, which was the goal.[2]

But other writers emphasized the role of the law. Considering "accidents," such as the question of insults, they thought that the duel was in the domain not of moral philosophers but of lawyers;[3] with regard to this subject, however, they should be not legislators but counselors. Among the recognized authorities on the code of honor, furthermore, were lawyers such as Puteo and Muzio.[4]

Before the sixteenth century, as has been noted, there had existed in Italy two general systems of law, the Lombard and the Roman,* and a third class consisted of the laws which were local. By some of these local laws the duel was prohibited, and with regard to it they seem to have been both comprehensive and severe. Milan, Piedmont, Naples, and Venice, for example, had laws directed against the parties to a duel, its instigators, and those whose interest in it was due to mere curiosity; and among the prescribed penalties were confiscation of property, branding as infamous, imprisonment, hanging, and quartering. It seems that the law of Milan, moreover, in order to prevent provocations to duels, made it illegal to utter threats, or to re-

* Pp. xviii–xix.

ply to an insult by giving the lie. One of the writers, however, held that the *mentita* was not illegal, for it neither gave nor accepted a challenge.[5] Some of these local laws were the following:

For Sicily, an antidueling decree was promulgated by the king of Aragon in 1465; and in Venice, by a law of April 10, 1535, those who had been witnesses in courts of law should not be challenged to duels on account of their testimony. The war of the law against the duel actually began, however, with the "pragmatic sanction" of the Viceroy Peter of Toledo at Naples, January 2, 1540. This entirely prohibited the duel on pain of death to combatants and their seconds. Venice, at about the same time, enacted a law which provided that in the dominions of that state both those who fought and those who published *cartelli* should be punished by ten years' imprisonment and other penalties. In 1542 the Emperor Charles V prohibited the duel in the territory of Milan, unless by permission of the prince or his representative. Legal opposition to it was decreed also in Tuscany.[6]

But, although the duel was prohibited by these various local laws, there remained the influence of the law of the Lombards; hence even after the middle of the sixteenth century, as to the legality of the duel some of the writers seem to have been uncertain.* Shrewd lawyers were therefore able to cause very diverse opinions and decisions.[7] Castillo (1525) said that, although Lombard law was no longer followed ordinarily, yet since it had been prescribed by the emperors, it could be used in cases that were doubtful. Alciato (1541) thought that one might be governed, according to the circumstances, by either

* Among the older authorities on the law, Cino da Pistoia (*ca.* 1270–1336 or 1337) had held that it was allowable to participate in duels for the sake of honor; and, according to Baldo, they could rightly be fought even by clerics. But Baldo's opinion may be explained by his statement that, since it was necessary to deceive the rabble, one must cater to public opinion. Lignano, moreover, although noting that the duel was illegal, said that the law overlooked it because its purpose was not so much to inflict injury as to obtain honor (Lignano, *De duello*, 284; Castillo, [J3]).

The lawyers who had justified the duel, however, were censured by the eighteenth-century writer Maffei. He declared that they were either ignorant of ancient customs or they desired to please the people and thus gain influence (Maffei, 182, 287–88).

the Lombard law or that of the Emperor Frederick II; the former was valid if the duel was due to lack of the proof acceptable in a law court, and there could be recourse to the law of Frederick (which gave the choice of place, time, arms, and judge to the party who was challenged) if the duel was imposed upon a man against his will. But Alciato did not consider that both these conditions might arise in connection with one duel. With regard to the case of Pignatelli versus Pignatelli, Alciato (1561) said that one might have the right to fight by proxy, according to the law of Frederick;* and Claudio Tolomei (1548), in his opinion on the same case, had noted that, since duels were prohibited by the contemporary law, they took place under the law of the Lombards and the code of knighthood. Giulio Landi (1564) stated that the law of the Lombards was obsolete, but Giulio Ferretti (1562) had used the expression "unless one follows Lombard law." So at least up to the time when Ferretti was writing, the question which code should be used was not definitely answered.[8] Sometimes, moreover, the discussion seems to refer to the judicial duel.

At any rate, some of the authorities on the duel saw in it an appearance of legality. In connection with the subject of rank and titles, for example, they noted that the law had allowed to a count, unless his participation in a duel was due to his being accused of unfaithfulness as a vassal, the privilege of having his place taken by a substitute.[9] They said, moreover, that the opinions of experienced generals and princes who were authorities on the duel were founded chiefly upon the law and were not contrary to it.[10] The supporters of the duel furthermore declared that it was not prohibited by human laws, because these were derived from the laws of nature.[11]

Yet the law was supposed to permit the duel only in very few cases.[12] As to what these were, there were various statements. Puteo, who was himself a lawyer, said that the duel was fought legally only when it was caused by an accusation of treason against prince or country.[13] Some, however, thought that the law allowed to the duel greater latitude. Noting that

* P. xix.

formerly it had been permitted for the display of valor, for military practice, for recreation, etc., they said that it might still be employed by the permission of princes;[14] that a man used justifiable self-defense when he fought in order to avoid being publicly infamous;[15] that the law could decide whether or not a given action, such as a duel, prevented many deaths, brought about peace, and hence redounded to the public welfare;[16] and that the law permitted the duel when there was no legal proof.[17]

Castillo (1525), however, and also most of the writers after the middle of the sixteenth century, thought that, although with regard to this subject the law seemed self-contradictory, yet the duel was legally prohibited.* As for the fact that the law permitted self-defense, even after a grave insult it was allowed only when it was used immediately.[18]†

But in reality the law regarded the decision of a duel in one of three ways: it might partially accept it, ignore it, or overrule it. As for the attitude of acceptance,‡ the loser of a duel, if he was afterward legally convicted on the same charge on account of which he had fought, was supposed to be punished by the law more lightly than if there had been no combat. When he had fought because he was accused of homicide, for example, his subsequent conviction by a court of law might result not in the penalty of death but only in the amputation of a hand. If a duel had resulted in an accused party's victory, moreover, the law could regard him as acquitted.[19] By a sort of comity of nations, also, it was thought that, if a man being in a foreign country had killed another in a duel which was fought by permission of the ruler of that country, the winner after returning home should not be punished for homicide.[20] Selling a captive

* Castillo held also that it was opposed to the equity of the law of nature (Castillo, [J2]). This fact had been stated by Lignano, who added that the law of nature had been made specific by the civil law. The latter, he said, opposed the duel for this reason, and also because duels sometimes resulted in the defeat of the just cause. He noted, moreover, that the law prohibited everything which prevented recourse to the law itself (*De duello*, 282–82v).

† Bryson, 48.

‡ In this connection, sometimes the writers seem to have referred to the judicial duel.

taken in a duel, furthermore, or mistreating him in order to make him give money, was considered illegal and hence to be prevented by the magistrates.[21]

With regard to the fact that a duel might be ignored, this could be the case unless it was otherwise decreed by local custom, or one followed the law of the Lombards. So a participant in a duel might afterward be tried before a court of law for the same alleged offense which had caused him to be challenged to the duel.[22]*

That the decision of the duel was sometimes overruled, finally, appears from the following incident, which occurred before the sixteenth century:

A soldier issued a challenge to a companion because the latter had ravished the former's wife. But because of fear of the impending contest, the challenger died. So his body was thereupon brought into the field in a coffin upon a horse, and the opponent broke his lance by striking the coffin. Because the horse then became frightened and ran away, the victory was awarded to the said party who had been challenged. The magistrate, however, having learned the truth concerning the offense, did not accept the decision of the duel but caused the victor to be hanged.[23]†

The foregoing discussion has been concerned with the attitude of the law toward the duel; reciprocally, the authorities on the duel gave much consideration to the law and acknowledged its influence. In the first place, since in earlier days the duel had undoubtedly been a function of the law, the votaries of the code of honor might still accept legal decrees as final.[24] A case which had been brought to court, for example, could not afterward be decided by a duel, even if the legal trial had failed to give proof;[25] and, if it had resulted in an acquittal, whereas the defendant was condemned by the code of honor, he was re-

* This had been noted by Lignano, who added that if a man had refused to fight a duel, the law did not therefore declare him to be infamous (*De duello*, 284).

† Susio attributed this narrative to Puteo (Susio, 173–74), but it does not appear in the edition of the latter's book which has been used for the present study. The question of fighting a dead body, moreover, seems not to have been elsewhere mentioned by the Italian writers who discussed the duel in the sixteenth century.

garded as infamous only to a limited degree.[26] Since one who had another in his power by means of *remissione*,* moreover, could not be legally prosecuted for inflicting upon him a blow, this punishment could not be resented by a challenge to a duel.[27] A challenge might be refused, furthermore, if because of the challenger's character the law would not permit him to be a witness, or otherwise declared him to be infamous.[28]† It was by means of the law, also, that one determined what must be the duelist's minimum age; this was the legal age at which he attained to manhood. As to just what this age was, one might be guided by the law of the Lombards and of Sicily, or by Roman and canon laws; under the former codes the age was eighteen, and under the latter codes it was twenty-five.[29]

From the law, likewise, authorities on the duel drew many analogies. Some of the general similarities between these two methods of seeking proof were the following: the foundation of the case was a dispute; there were an *attore* (the "plaintiff" or the "challenger"), a *reo* (the "defendant" or the "challenged party"), and a judge;‡ if the *attore* did not prove his case, the *reo* was absolved; and the judge gave the decision. The analogy was still closer if for the duel there was an "ordinary" judge, who had full authority with regard to both the fight itself and the *eccezioni*.[30]§

The law and the code of honor had points of resemblance also as to certain details. In the first place, there was similarity as to that which was the cause of duels of honor, namely, insults. If a man had received these from more than one person, for ex-

* Bryson, 95–101.

† With regard to the fact that the duel was prohibited also to an infamous substitute (*campione*), Lignano had said that one guilty of stealing or other serious offense could not be a substitute in a duel, just as he could not be an advocate at law (Lignano, *De duello*, 283v; Alciato, *Duello*, 40).

‡ These similarities had been noted by Lignano. He said also that for the legal methods of proof, or "instruments," such as witnesses and documents, the analogues in the duel were the arms (*De duello*, 283). With regard to the duel of honor, however, the use of legal terminology met with opposition; one writer, at any rate, held that since such a combat was illegal, it was incorrect to say that, like a judicial duel, it had an *attore*, a *reo*, a judge, etc. (Massa, 10–10v).

§ P. 31.

ample, the code of honor, like the law, provided that settlement should first be made concerning the offense which was the greatest.[31]* If one had given a double insult, moreover, or if two parties had insulted each other, there should be applied the legal rule that the offense to be considered first was the one that had been first committed.[32]† A *mentita*, furthermore, must be specific;‡ and, similarly, if one without permission was erecting a building on the land of another, and the latter in his legal complaint did not name the offense specifically, the trespass could be continued.[33]

Other matters which suggested analogies with the law were connected with the challenge. With regard to the cause of the dissension, for example, the challenger, like the plaintiff at law, must be an interested party.[34]§ It was held by some, moreover, (but denied by at least one of the writers), that the dueling-terms *attore* and *reo*, which were taken from the law, corresponded to their legal meanings. At any rate, in both the duel and the law the *attore* demanded satisfaction from the *reo;*[35] and a reason for the suggestion that the challenger, rather than his opponent, should be given the choice of arms was the fact that the plaintiff, according to law, had the burden of proof.[36] The wording of a *cartello*, furthermore, might include legal phraseology, as when a man declared that he would *far questione;* and since this ordinarily referred to the plaintiff's taking the first steps in a lawsuit,[37] if one of the parties to a duel used these words he might be declared the challenger. On the other hand, a man who gave a *mentita* did not become a challenger by asserting that he would defend his position by the use of arms; for the latter declaration was merely defensive, like the statement of a defendant at law that he would maintain his cause by means of witnesses and documents.[38] The fact, also, that during the negotiations preceding a duel the principals sometimes exchanged their roles was compared to the legal procedure by which the defendant became the plaintiff if the case was appealed.[39] When a challenge was refused, moreover, the party

* Bryson, 53–54.

† *Ibid.*, 102.

‡ *Ibid.*, 61, 63–64.

§ *Ibid.*, 53.

who so acted was like one legally summoned to court; he could not plead his own inferiority or infamy, but his refusal was valid if he was infirm, imprisoned, or held a public office.[40] A principle of the law also suggested a reason for the refusal of a challenge given by an inferior to one of high rank; the latter could not be legally imprisoned or otherwise judged except by his peers.[41] The fact, too, that a man who had ignored a challenge had his honor restored if he accepted the challenge within a year was analogous to the rule of the law by which, although the property of a defendant who failed to appear for his trial was handed over to the plaintiff, it was restored if the defendant presented himself within a year or some other period stipulated by the judge.[42]

Both the challenge and the duel itself were compared to the legal attempt to extort confessions by means of torture.* For the challenge, as for the torture, it was necessary that an accusation should be based on a reasonable presumption and be incapable of legal proof.[43] As for the duel, an additional reason for not challenging one of higher rank than the challenger was the fact that the duel took the place of legal torture, which was not inflicted upon distinguished men unless the alleged offense was very serious.[44] To the resemblance to legal torture, moreover, the duel was generally supposed to owe both its origin and its continued existence; as torture was used to force confessions, and it was presumed that one who could endure it was innocent, so the duel was regarded as a method of proof.[45]†

The law was imitated also when duels were fought by substitutes. These were compared to legal witnesses; the fortitude of the substitutes was tested by the duel as the witnesses in a case at law were sometimes subjected to torture.[46] If the substitute, after having sworn to do his best, moreover, lost the fight intentionally, or otherwise committed perjury, his punishment was the same as that of a false witness; he suffered the amputation of a hand. The perjury of the substitute, further-

* *Ibid.*, 78–79.

† In the eighteenth century the statement that the duel was thus based upon the principle of torture was repeated by Bellincini (Bellincini, 3).

more, like that of the witness, was not imputed to the party for whom he acted.[47]

Another class of men associated with the duel, the seconds (*padrini*), were compared to legal advocates.* One of the writers, remarking that the disputes of opposing seconds should not lead to duels between them, noted that a legal decision never resulted in the infliction of a penalty upon the loser's attorney.[48]

In connection with the preliminaries to the duel, there was a comparison with regard to a party's swearing that he believed his cause to be just. This oath was sometimes considered to be obligatory for both parties, like the oath of good faith under the law of the Emperor Frederick II, and also that of the church.[49]

There were further analogies from the law with regard to the fight itself. For example, as for the theory that the party who should attack first was the challenger, this was taken not only from the judicial duel but also from a general principle of the law; the first move in a litigation should be made by the plaintiff.[50] Some held, moreover, that a duelist was justified in using deceit, because the law of contracts permitted fraud provided that this did not affect the value of the property more than 50 per cent;[51] but, on the other hand, a duelist should not resort to magic, since its use was prohibited by law.[52]

Between a legal case and a duel there were comparisons also as to the termination. The ending of the duel by the withdrawal of one of the parties by the judge's permission was compared to an act allowed by civil law; namely, the withdrawal of a suit by a plaintiff. In criminal law, however, this action rendered him infamous, and the same was true of a party who withdrew from a duel without the permission of the judge.[53] But if the fight was interrupted by the judge himself, it ought to be resumed; because when a magistrate suspended court without rendering judgment, the case was unfinished.[54] When, on the other hand, the duel ended with a decision, from this there was generally no appeal, as there was none in law when one had pleaded guilty.[55]

There were likewise similarities with regard to the results.

* But advocates might be used only in civil cases; in criminal law the parties acted for themselves (Lignano, *De duello*, 283v; Conrado, 33).

One of the writers cited the fourteenth-century authority Lignano, who had said that the loser of a lawsuit, like a man defeated in a duel, must pay the expenses of the contest and that, if the party who had lost the duel was the challenger, like a legal plaintiff he was subject to the penalty of *talio*.[56] From the law, also, was derived the theory that a man taken prisoner in a duel was released from all obligation to his captor if he had not heard from the latter within thirty years—this was the fixed period in legal matters, by a "statute of limitations."[57]

In spite of these various analogies between the duel and the law, however, some noted that the resemblances were less numerous than the features in which they differed. According to Claudio Tolomei, the two were as dissimilar as were a man and a monkey,[58] and the decisions of law might equally well be compared to the results of games of chess or ball games.[59] A challenge, for example, could be refused by a "peremptory objection" because of the other party's general bad reputation; whereas, according to the law, a man was not deemed guilty until after his formal condemnation.[60] The duel also differed essentially from legal torture; in the former the punishment might be suffered by either party or by both.[61]* With regard to a certain type of duel, moreover, it has been noted that special honor was awarded to a contestant who wounded his opponent in the face,† but the law provided that this part of a criminal's person must not be branded.[62]

The code of the duel differed from the law also with regard to the judge and the jurisdiction. In the first place, a *mentita*, the usual provocation to a duel, did not necessarily mention the name of the man at whom it was directed,‡ or repeat his statement which the *mentita* declared to be false,§ but a legal judge must know all the facts which were pertinent.[63] In negotiating for the duel, moreover, the parties placarded *cartelli* or sent

* Bryson, 79.

† P. 72.

‡ This must be done, however, if one did not use some such formula as, "Whoever has said, etc., lies" (Pigna, *Duello*, 105–6; Bryson, 63).

§ Cf. Bryson, 63–64.

them to each other, but litigants appeared before the judge. For the duel, furthermore, one chose a special judge, but in law an accusation was made before the tribunal which ordinarily had jurisdiction over the defendant.[64]* As for the argument of certain lawyers that the duel imitated the Roman law in that there must be a judge, and the contestants might interpose *eccezioni*, the reply was that in law the judge must be competent, and the *eccezioni* must be proper.[65]

A number of differences between the law and the duel were stated by Tolomei. Some of them were as follows:

The law came from the Greeks and the Romans and was written; the duel originated with the Lombards and was generally a matter of custom. By the law, one sought benefits which were chiefly material; in the duel, one was concerned only with honor. The law was supposed to represent the justice of man; the duel, the justice of God. According to the law, rulers or their ministers must listen to complaints and remedy them; the duel they could ignore. A case at law was tried before a regular official; for a duel a special judge must be chosen for the occasion. In law a complaint was made to the judge; the challenge for a duel was given by one of the parties to the other. In law the complaint was different from the summons; for the duel the challenge performed the functions of both. The parties to a lawsuit met as equals; for the duel the challenged party had the choice of arms. Litigants were generally represented by advocates; the principals of a duel usually fought personally. In law, proof was made by documents and witnesses; in the duel, by arms and valor. The law did not consider any words, even those of a confession, if they were uttered outside the court; as for the duel, one might be incriminated by words spoken anywhere. In the civil law a litigant was free to yield and leave victory to the opponent; in the duel, this would be disgraceful.

* This had been declared by the Roman emperors Diocletian and Maximianus (Massa, 65). The procedure was different, however, in such a case as was mentioned by Conrado: if two persons were on opposite sides of the boundary between legal jurisdictions, and one of the parties wounded the other by shooting an arrow, the offender was tried in the jurisdiction in which the injury was received (Conrado, 41–41v).

Above all, the fundamental difference appeared in the fact that the law prohibited the duel.[66]

But this prohibition does not seem to have been very effective. The rigor of the law was modified by the rulers, whose duty it was to determine in each individual case whether there was a serious offense against honor, whether the cause was just, and whether the matter could be settled peaceably.[67] Some of them, to be sure, appear to have discouraged dueling; for example, Conrado, writing in 1549, stated that so far as he knew no duel had been authorized in the territory of Milan since the previously mentioned decree of Charles V in 1542.[68] But some of the writers expressed what was perhaps the popular view: even if with regard to the duel the attitude of experienced rulers and generals was in some respects contrary to the law, yet their opinions should be accepted; and, if magistrates were notoriously unjust, they thereby lost their authority.[69]

At any rate, the duel continued to flourish during the greater part of the sixteenth century. This was perhaps largely because some of the local laws prohibiting it were too drastic to be accepted by public opinion,* and because conflicting views were held by not only the knights and the lords but also the legal authorities themselves; according to Tolomei, these experts twisted the law now in one direction and now in the other and stretched it whenever they pleased.[70]

* In fact, they were not enforced until the second half of the nineteenth century, at which time they were made milder (Gelli, *Il Duello*, 19).

CHAPTER VIII

RELIGION

IN ADDITION to what has been stated as to the antidueling attitude of the church before the sixteenth century,* the matter was discussed by Puteo (1471?). He noted, for example, that it was not permissible to fight duels near churches or other sacred spots on church lands, or on religious feast days. But ecclesiastics could permit duels fought in order to punish heretics, or disobedient subjects of the church's temporal state, such as usurpers of its property. With regard to the latter, however, duels were allowed only when justice could not be obtained through the civil law.[1]

There remains to be considered the status of the duel from the point of view of the church in the sixteenth century. In the first place, duels must not be fought by clerics. One who had done so was deposed from his priestly office. But he might be reinstated if he had engaged in the duel in order to recover stolen goods, or for some other reason which was valid. If in such a case he had inflicted no serious physical injury, he could be restored to his position, or he could even be promoted, by the bishop; if the cleric had inflicted mutilation, he might, for a proper reason, receive pardon from the pope; but the offender could not be reinstated if he had caused death.[2]

So the duels which the church was supposed to regard leniently might be fought only by laymen. Although such contests were repugnant to law both human and divine, they were thought to belong to the class of evils which Christianity had tolerated and modified.[3]†

At any rate, there existed a belief that the church permitted duels which were "defensive."‡ According to this theory, it did

* Pp. xxiv–xxviii. † P. xxviii.

‡ Lignano, who believed that these were allowed by divine law, noted that the latter and canon law, which is subordinate to it, cannot contradict each other; they lead by

not oppose duels fought in defense of self, country, wife, children, or others the protection of whom was obligatory.[4] So canon law was supposed to be like civil and divine law in that it permitted a defense which was just.[5]

Even staunch opponents of the duel of honor, moreover, such as Massa and Susio, believed that the church sometimes permitted the "state" duel. As an example, they mentioned the thirteenth-century proposed combat between Charles of Anjou and Peter of Aragon.* Massa, to be sure, held that except in such a clear and important case as this it would be sinful that a duel should be allowed even by the emperor or the pope; but Susio said that, although there should be no question of church property, the pope would probably prefer a duel between rulers rather than a war between their subjects.[6]

To others, however, it was evident that by the law of the church all duels were totally prohibited. These writers held that even if a duel had been permitted by a ruler, or was otherwise apparently legal, it could be prohibited by the local prelate, and he should be obeyed; for both civil and canon law regarded the duel as a form of tempting God.[7] According to the Spaniard Castillo, furthermore, one should avoid not only duels but also such dangerous sports as tournaments and bullfights.[8]

For not only the actual participants in the duel, moreover, but also for those who aided and abetted it, the church proclaimed severe penalties. Puteo had said that, although duelists might confess and be absolved after the combat was over, they could not, unless they fought by compulsion, be absolved and receive the Eucharist beforehand. They did not die in mortal sin, however, if they chose death rather than recanting by telling a falsehood.[9] In 1509 Pope Julius II prohibited duels within the papal territory: for the fighters, he decreed excommunication and forbade church burial; and for the lords who

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different ways to the same goal. Hence such a duel was permitted by canon law. Since no act of man which is caused by the law of nature, moreover, can be prohibited by any prelate, even the pope, the duel fought in self-defense was in the same category as eating, drinking, and the exercise of sex life; these are not forbidden but are restricted (Lignano, *De bello*, 379–79v).

* Appen. III.

granted dueling-fields, he prescribed excommunication and a fine. His successors attacked the duel still more sharply; in 1519 Leo X, stating that the foregoing prohibition was not obeyed, but that duels were everywhere fought daily, decreed punishment for those who furthered the duel in any way, and both his edict and that of Julius were repeated by Clement VII (1523–34).[10] The above-mentioned statements of Puteo, furthermore, were echoed by Marozzo. He said that although the duelist might confess, be absolved, and receive the Eucharist after he was mortally wounded, he could not do so before he entered the dueling-field, for he was in the state of mortal sin because he wished to commit homicide. These sacraments were allowed, however, if he fought in defense of himself and the truth and did so reluctantly and of necessity, as when he was forced by his lord or must fight a duel for the sake of his country. Engaging in the duel did not cause him to die in mortal sin, moreover, if when he was down and the opponent's weapon was at his throat, he refused to save his life by making a recantation which was false.[11] According to another writer, nothing gave greater dishonor to a good man than his undertaking a fight in which if he were slain he would die without receiving the Eucharist, and must not be buried in hallowed ground; he could not be comforted with the spiritual food which is the body of Christ and he would have a common burial with dogs.[12] Still another declared that, since dueling was a mortal sin, previous to the fight a participant must be refused the Eucharist; and, if he was killed, even if he had repented he was denied church burial.[13] But the Spanish theologian Sepúlveda noted that if a mortally wounded duelist should confess to a priest, or if this was not possible should at any rate repent and implore the mercy of God, then although pontifical law denied him a grave in a sacred place, yet even if he had fought for a cause that was evil, the duel did not necessarily cause the loss of his soul; "the unpardonable sin" is that in which one persists until death.[14] According to another opinion, not only was the body of the slain duelist debarred from burial in a church or a cemetery but also his soul was damned unless he had confessed and received

the Eucharist.[15] As for Christian burial, moreover, one of the writers said that the church refused it not only to men killed in duels but also to those who lost their lives in such sports as tournaments.[16] In a book published near the end of the sixteenth century, furthermore, it was asserted that, if the one killed in the duel was the party whose cause was unjust, he would enter into eternal damnation.[17]

The church likewise prohibited one's attending a duel as a spectator. In the first place, this was forbidden to clerics. The reason was that they would be in danger of committing two mortal sins: encouraging that which was forbidden and becoming by their presence a source of scandal. Because of this prohibition, one must never grant a dueling-field in places subject to bishops, cardinals, or the pope. According to one writer, clerics might not attend either duels or tournaments where men were killed. For this he gave a curious reason: the cleric would become irregular by favoring one of the parties.[18] As to the spectators in general, whether clerics or laymen, Troiano Delfini said that the church punished not only the contestants and the lords by whom the duels were permitted but also the people who witnessed them.[19] But, if during the combat a spectator died, the fact that he had been present at the duel did not cause him to be deprived of Christian burial.[20]

With regard to attending not duels alone but all kinds of public performances, the Spanish Bishop Guevara discussed the question of sin in its different degrees. In the first place, a man sins mortally if he takes pleasure in seeing that which is essentially evil; if, because of love for what is in itself legitimate, he neglects duties that are obligatory; or if his will is to attend the performances even if God or the church should forbid them. His sin is only venial, however, if he attends legitimate entertainments to the neglect of activities which although not obligatory are useful; if, although the entertainments are prohibited, he is in no way responsible for them and has no power to prevent them; or if he attends them merely out of idle curiosity. This last-mentioned offense, Guevara added, is less serious than indulging in thoughts which are carnal; for the latter are

worse by their nature and cause greater desire for evil acts. One who is moved only by curiosity, on the other hand, cares little whether the entertainment takes place or not; he witnesses it only for pastime. Yet he is in danger of committing mortal sin, for his presence may cause scandal or imply his consent to performances which are prohibited. He commits no sin, however, if he attends the performance in order that he may intelligently denounce it.[21]

For certain offenses connected with dueling, penalties might be inflicted by both the church and the state. If a Christian at the court of an infidel prince, for example, should brand a fellow-Christian as ignominious because the latter would not fight a duel, the former upon his return home would be severely punished by order of judges both ecclesiastical and secular.[22]

The extinction of the duel as an important institution in Italy seems to have been due largely to the attitude of the Council of Trent. In the first place, in 1549 it confirmed all the anti-dueling enactments which the church had already made.[23] In 1560 Pope Pius IV, stating that the previously mentioned decrees of Julius II and Leo X had not been obeyed, specified that punishment should be given to those who aided or encouraged the duel by writing or publishing *cartelli*. He threatened, moreover, that, if duels should be encouraged or permitted by clerics, these would be rendered incapable of holding offices in the church; and, if the offenders should be lesser princes than kings or the emperor, they would be subject to excommunication, which included their being deprived, so far as possible, of all authority. In 1563 the Council of Trent, in prohibiting that the duel be encouraged by rulers, specifically included kings and the emperor.[24] The decree is as follows:

Detestabilis duellorum usus fabricante diabolo introductus, ut cruenta corporum morte animarum quoque perniciem lucretur,* ex christiano orbe penitus exterminetur. Imperator, reges, duces, principes, marchiones, comites, et quocunque alio nomine domini temporales, qui locum ad monomachiam in terris suis inter christianos concesserint, eo ipso sint excommunicati, ac juris-

* With similar phraseology, this had been stated by Giulio Ferretti (d. 1547) (312v). Lignano, moreover, in the fourteenth century, had said that the duel was invented by the devil (*De duello*, 282v).

dictione et dominio civitatis, castri aut loci, in quo vel apud quem duellum fieri permiserint, quod ab ecclesia obtinent, privati intelligantur, et, si feudalia sint, directis dominis statim acquirantur. Qui vero pugnam commiserint, et qui eorum patrini vocantur, excommunicationis, ac omnium bonorum suorum proscriptionis, ac perpetuae infamiae poenam incurrant, et ut homicidae juxta sacros canones puniri debeant, et, si in ipso conflictu decesserint, perpetuo careant ecclesiastica sepultura. Illi etiam, qui consilium in causa duelli tam in jure quam facto dederint aut alia quacunque ratione ad id quemquam suaserint, nec non spectatores excommunicationis ac perpetuae maledictionis vinculo teneantur; non obstante quocunque privilegio, seu prava consuetudine, etiam immemorabili.[25]

After the Council of Trent, the edicts of the church became still more drastic. In 1582 Gregory XIII decreed that the punishments announced by the Council should be inflicted even if there was no formal challenge, and the duel was quite private, without ceremony or witnesses, etc. In 1592 Clement VIII, proclaiming excommunication for those who composed, signed, or published *cartelli*, or aided with their counsel those who did so, specified that these documents were especially objectionable if they contained *mentite;* and the penalty extended to cases in which the challenge was merely implied, and to those in which a proposed duel did not actually take place. He also forbade the duels for which it was stipulated that they should cease after a specified number of assaults, or at the first shedding of blood.[26]*

But even after the Council of Trent, the church for a while allowed the duel to be encouraged by the publication of certain books; it was not until later that they were put on the *Index*. Pius V, for example, permitted the printing of the works of Muzio.[27]

Some, moreover, at least before the time of the Council of Trent, with regard to the duel ignored the teachings of religion or even defied them. One writer said that, although the duel was opposed by Christianity, lofty souls could not endure offenses; hence the most noble knights defended their honor, which was more valuable than all the treasures of the world. Yet he expressed the hope that his book, written to satisfy their martial souls, would attain this purpose by the help of God.[28] The duel

* Pp. 70–71.

was tolerated, furthermore, by the emperor and other secular princes, who permitted such combats for causes which they regarded as just.[29] Although it was admitted that, since the forgiveness of enemies was enjoined by Christ, the law should compel reconciliation, yet there was an exception for those who professed the *religione* of honor.[30] So even though the duel was forbidden by the church, allowing it for a just cause was supposed to be the duty of a lord.[31] Some noted that the duel of honor was not to be governed by the regulations made for monks;[32] and one of the writers remarked that, if a man should consider as a reason to avoid a duel the fact that he and his fellows were Christians, he would be banished from the company of those who made profession of honor and knighthood.[33] In fact, according to another statement, the knights did not wish to be Christians.[34]

Some features of the code of honor, however, accorded to religion more or less recognition. An example of this is the fact that, although in some matters one might, if necessary, seek the aid of non-Christians, yet one must not have recourse to an infidel ruler in order to be allowed to fight a duel, for infidels were considered to be enemies to Christian countries. This prohibition was applicable, moreover, even if permission to fight a duel could not be obtained from a lord who was a Christian.

Another case was concerned with the matter of slavery. Although, as has been noted, public opinion regularly prohibited enslaving a fellow-Christian,[35]* yet if a man was on his way to fight a duel in the jurisdiction of an infidel, he might be captured by a Christian and sold into slavery; and, although custom did not prohibit his release, his owner had the right to retain him. One writer, indeed, held that from the point of view of religion, the captivity should be permanent.[36]

There was even the suggestion that the duel was an expression of religion itself. One of the writers, noting that in ancient times those who fought committed their cause to fortune, held that this attitude was equivalent to trust in God and that, just as the blasphemy of railing against God's providence is an ac-

* P. 77.

knowledgment of his existence, so recourse to the duel, by which one invoked his aid, was perhaps a confession of religious faith. With regard to duels as giving examples of fortitude, moreover, this writer compared these combats to Christian martyrdom, in which each death produced a hundred converts.[37]

At any rate, certain defenders of the duel declared that religion sometimes permitted it. With regard specifically to the "state" duel, they appealed to the narrative of that between David and Goliath.* Some declared that this contest had been allowed by inspiration of the Holy Spirit.† Permissible duels were limited, to be sure, to those fought in behalf of one's country, but these included combats which resulted from accusations of treason.[38] As for David, he fought for a cause which was just and hence committed no sin.[39]

Some held, furthermore, that resentment, the basis of the duel of honor, is not entirely forbidden by the New Testament. They said that, although Christians who have been offended should grant pardon, it is no offense to Christ to make peace according to the demands of worldly honor; and, if this has been tarnished, pardoning for the love of Christ does not remove the stain. According to the Bible, "let none of you suffer as a murderer, or as a thief, or as an evildoer, or as a busybody in other men's matters,"‡ and this was explained as meaning that a man must not suffer an insult as if he deserved it; he must put aside hatred but not the regard for honor.[40] There was also another citation which was considered to be pertinent, with regard to one who has given an offense and will not discuss the matter with the party whom he has injured; in this case, says the Bible, "take with thee one or two more, that in the mouth of two or three witnesses every word may be established."§ Here, as had been pointed out by Jerome (*ca.* 331–420) and other early commentators, there was reference not to a court of law but to

* I Sam., chap. 17. According to Dante, this combat clearly refuted the theory that the victor must be the party who was the stronger (*Monarchia*, Book II, ix, 11).

† Some said, moreover, that God inspired the last act of Samson (Judg. 16:21–30), the killing of Holofernes by Judith (Jth. 13:1–10), and the death of Ananias and Sapphira through the words of Peter (Acts 5:1–10) (Marozzo, 103; Terzo, 65).

‡ I Pet. 4:15. § Matt. 18:16.

a council of upright men who would induce an offender to repent because of shame and fear; and these persons, according to a writer in the sixteenth century, were similar to those who decided questions concerning a duel.[41] With regard to the Christian doctrine of nonresistance,* some noted that Christ himself, when given a blow, uttered a rebuke and did not offer the other cheek.† One of the writers remarked that, although Christ forbade the desire for vengeance, he did not prohibit self-defense; for the subject of resentment was already regulated by many divine laws in the Old Testament, and by human laws dictated by reason. As for the incident of Peter's attack upon Malchus,‡ Augustine (354–430) had said that Christ's rebuke referred to fighting without the permission of a superior authority. Peter was supposed to have been censured not for his resentment but because his act was superfluous, since Christ did not need it and also chose to be captured; because the act of provoking so many was foolhardy; and because Malchus was simply obeying orders and did not know what would be the prisoner's fate. In fact, according to one opinion, a man who takes literally Christ's doctrine of nonresistance is not suited for society; he ought to live in the woods.[42]

As has been suggested with regard to the attitude of the church, religion was supposed to be especially tolerant of the duel which was fought in "self-defense."§ One of the writers held that, since a just defense is permitted by both reason and religion, to allow one's self to be killed "unreasonably" is almost the sin of suicide; although the Bible prohibits revenge, yet since a man must love and protect his neighbor, he ought to do the same for himself.[43]

* Matt. 5:39; Luke 6:29. † John 18:22–23. ‡ John 18:10–11.

§ Lignano, noting that this kind of combat was derived not from civil or canon law but from the law of nature, said that the idea that divine law would prohibit natural instincts is absurd. The injunction to love one's neighbor as one's self, moreover, implies self-love and hence self-preservation; and since love of the neighbor permits defending him from death even against his will, religion allows similar defense of one's self, and even prohibits one from refusing to employ it. Divine law also permits asceticism, to be sure, which destroys the body. Asceticism, however, is practiced not in order to seek death but for the sake of the soul; religion prohibits suicide (Lignano, *De bello*, 379).

The duel of honor was sometimes defended even by theologians.* Bishop Guevara, although he asserted that as a gentleman, a Christian, and a cleric he would rather forget offenses than avenge them, said that questions such as those concerning property must be handled by the law; decisions as to war, by the king; matters of conscience, by the confessor; but affairs of honor, by the lance or the sword. This opinion the writer explained by the statement that, as in accordance with justice sins should be bewailed, so it is not unjust that those who make false accusations should be punished.[44] Sepúlveda, a Doctor of Theology, held that, if there were very serious and intolerable offenses, with no aid from the ruler, God would not be angry if one used the law of nature to repel force by force and that, if a man should refuse to fight a duel when he was falsely accused of treason, he would not act bravely, prudently, or religiously.[45] Bernardi, bishop of Caserta, noted that refusal to permit religious men to express resentment would prevent their having recourse even to a magistrate.[46]

The duel was defended by means of analogy, moreover, with two other institutions which were supposed to reveal the judgment of God. One of these was the custom of casting or drawing lots,† and the other was war.‡

Some held that this divine judgment in the duel was inevitable.[47] According to one writer, even nations which did not believe in the true religion thought that God was the giver of every victory, and their soldiers sometimes bore this statement upon their shields. As for Christians, the duel was prohibited, to be sure, because it was diabolical, but it was the opinion of soldiers that by a miracle God always granted victory to the truth; if a man used no deceit, fought in the defense of justice, and invoked divine aid by prayer, his arms would be favored by God and the planets.[48] So, if because of lack of proof a question could not be decided by men, it seemed to be in accordance with religion that the judge should be God.[49] The justice of the

* But it is not apparent whether the statements here cited were made after these men had become theologians or clerics.

† Appen. V. ‡ Appen. VI.

divine will was supposed to be revealed even if the winner of the duel had not contributed to the victory by his own efforts.[50] True fortitude, furthermore, implies trusting in neither strength nor valor but in God, who will defend the truth.[51]

There were cases, to be sure, in which the theory of God's judgment required explanation. A duelist might be defeated, for example, in spite of the fact that his cause was favored by that which the Bible declares to be from God; namely, the authority of the state.[52]* But, according to one opinion, it would be vain and fallacious to suppose that the great Eternal Director of human actions should judge according to the laws of the Romans.[53]

At any rate, some of the writers followed the authorities of the church in holding that, since in many duels the just cause was defeated, the question of divine judgment was uncertain.[54]† At the time of the book of Puteo (1471?) and that of Marozzo (1536), the Italians and the French cautiously held that the duel showed divine judgment in most cases, and Marozzo added that God usually granted victory to the party who had been challenged. Since sometimes, however, the just cause was defeated, and therefore the divine judgment was not revealed, the punishment of the loser should be moderated.[55] One of the writers, to be sure, suggesting that God's intervention might be conditional, said that he did not remember to have heard of an unjust victory if the cause for which the duel had been fought was important,[56] but this statement indicates a weakness in the whole theory: whether a duel was important, and whether its result was just, depended only upon personal opinion. The justice of divine judgment was not apparent, moreover, if the two parties died of their wounds at the same moment.[57]

This uncertainty as to the results of duels was explained in several ways. One opinion was that the loser, even though his

* Rom. 13:1–7.

† As has been mentioned, this opinion had been held by the Lombard King Liutprand and the Emperor Frederick II (pp. xvii, xix). Lignano, moreover, said that the defeat of causes which were just was one of the reasons why the duel was contrary to divine law (*De duello*, 282v).

cause might be the more just, had in some respect been blameworthy. He might have erred by imprudence of speech,[58] and he acted rashly if he fought without armor; just as soldiers must not surrender their lord's castle, so duelists must protect their God-given bodies.[59] According to a famous authority, they should wear the armor of soldiers in order that God could reveal his judgment easily.[60] Others thought that the loser's offense might have been the fact that he fought from an improper motive. For example, God was not bound to aid those who put themselves above the legal authorities and desired to kill their fellow-men. Even if the opponent had wished to injure one's prince or country, or had killed one's friend or relative, a man must not fight because of hatred and the desire for vengeance but must consider only the injury to humanity and to God. He might be defeated also because he sought to obtain fame, or the favor of his lord, or presumed to trust not in God but in his own valor.[61]

Even though the loser was not at fault as to the duel, furthermore, he might be defeated because of sins which he had committed formerly. According to a proverb, old sin causes new penance.[62] This was supposed to be true even with regard to a defendant in a court of law; his previous sins might make him unable to endure the testing of his veracity by means of torture, or they might cause his accuser to produce witnesses who were false.[63]

Regarding the duel, an example sometimes cited in the sixteenth century was a judicial combat which had taken place in the Middle Ages. The cause was an accusation of theft, and the defendants were five brothers of Spoleto. The fight resulted in their being killed; or, according to other accounts, because of their defeat* they were banished, or at any rate all their property was confiscated. Later, that which had been stolen was found in the possession of others, and the brothers were proved to be guiltless. With regard to this matter, Pope Innocent III

* There seems to be no information with regard to the *modus operandi*. Perhaps each of the brothers fought in turn; or, if it is true that they were not killed, their cause may have been defended by that one of them who was the oldest or the strongest.

(1198–1216) stated that God had probably permitted them to be defeated in the duel because of their sins of the past.[64]

But there were those in the sixteenth century who considered the theory of "past sins" to be unsatisfactory. They said that God would not punish past sins by means of present injustice; and, even if the victorious cause was just, its success was the work of the devil, as a bait to catch the combatants, their counselors and seconds, the lords who granted the dueling-fields, and the spectators.[65] Since sins have been committed by all men, moreover, the belief that a duelist might be defeated because of his offenses of the past would cause all challenges to be refused; or the victory of the winner would not be due to his courage or prove that his cause was just.[66]

Some believed, finally, that in the decision of duels God took no part. They held that the theory of his intervention would be disproved even if the just cause had been defeated only once, for God and his justice are unchangeable.[67] Divine favor for duelists, moreover, had never been promised;[68] and, according to one of the writers, the fact that any duelist was defeated presented no difficulty to Christians; one who by engaging in a duel risked the loss of his soul lacked respect for God.[69]

The theory of divine intervention having thus been repudiated, some thought that the result of duels was a matter of chance. For example, the loser might have used a defective weapon.[70] One writer, although he acknowledged that all things are governed by the will of God, remarked that chance often aids skill and serves the will of man. With regard to seeking an explanation for this apparent contradiction, he held that men should restrain their curiosity.[71] According to another statement, the role played by chance had always been thought to be important; as for the judgment of God, to consider it is like setting sail upon a vast ocean.[72]

Some said that a duelist might be defeated because of his opponent's superiority in strength, skill, or courage.[73]* For ex-

* The statement that the duel did not reveal the truth but was unreasonable and unjust because the two contestants were always unequal as to body, mind, or experience had been made in the law of the Emperor Frederick II (Marozzo, 96v).

ample, deficiency in strength, shrewdness, or boldness was suggested as a reason for the defeat of the previously mentioned five brothers of Spoleto.[74] One writer remarked that, if the participants in a duel were equal, the contest would be indecisive.[75]

Perhaps the chief factor which was supposed to determine the result was the winner's superior valor. This he might possess, according to one authority, because of his confidence gained by experience, or the fact that he had been born under the influence of the planet Mars.[76] As for the other cardinal virtue of knighthood, which was justice, it was thought that victory would fall to the just cause if the two duelists were equally brave.[77] But one writer held that a man's courage was increased and he became the superior fighter if his cause was just.[78]*

Of those by whom the duel was opposed, some objected to it on the ground that it was a method of seeking revenge. This they held to be contrary not only, as has been noted, to the general principles of ethics† but also to revealed religion. As for natural reason, said one of the writers, the belief that this is contrary to religion is almost heresy; for both reason and religion express the truth, and the former is not destroyed, but is clarified, by the gospel.[79] Christ, although he did not prohibit self-defense, forbade men to seek revenge; and it was supposed that the martyrs, who prayed for vengeance upon evil, did not specify individuals. According to the Fathers of the church, a man must not express resentment by seeking out one who has offended him, even if the injured party does not intend to attack the other unless thereto provoked; resisting those who are arrogant is a civic virtue, but it is not an action of the perfect life, in which the offenders must be left to the judgment of God.[80] As for the duel, one statement was that, although its chief purpose was to reveal the truth, the divine will was opposed to its method, which consisted in wounding or killing.[81]‡

The attitude of the church, furthermore, was supported by

* Cf. Bryson, 11. † P. 92.

‡ Lignano had said that the duel was prohibited by divine law, partly because the foundation of all virtue is love for God and for one's neighbor, whereas the duel led to homicide (*De duello*, 282).

certain writers who held that dueling was a sin not only of the participants but also of the lords who allowed it. So, even if a court of law had shown a presumption of guilt which could not be proved legally, and the penalty for the alleged offense was death, yet permitting a duel would be a great load on the conscience.[82] Since the duel could not become permissible by custom, moreover, those who were asked to allow it should arbitrarily refuse. This gave no offense, just as there was none in the words of Christ, "If I will that he tarry till I come, what is that to thee?";[83]* and if a lord declared that he gave permission for a duel because he could not refuse a request, he was un-Christian and inhuman.[84]

A special case arose if a legal judge gave to a defendant the choice of either fighting a duel or being condemned to death. The common opinion was that, if the accused was innocent, he might rightly accept the duel if, like the biblical David, he put his trust not in arms but in God. But some held that the defendant should rather allow himself to be executed. As for the lord by whom the duel was allowed, he was supposed to commit mortal sin even if the defendant appeared to be guilty, for the combat might result in the wounding or death of the party who was innocent.[85]

The opponents of the duel also appealed to the biblical injunction that a man must not tempt God.[86]† One of the writers, to be sure, suggested that it was not applicable to a duelist who fought for a cause which was just.[87] But this opinion was rejected by others[88] because, whereas naturally the victor was he who was the stronger or the more skilful, one sought a decision by means of a miracle.[89]‡ Such presumption was regarded as a mortal sin, which debarred the offenders from receiving the Eucharist. This condemnation applied to the challenger; the one who accepted the challenge; those who gave to the duel aid, favor, or counsel; and those who could prevent the combat but did not.[90] So one who had received an affront must not

* John 21:22.

† Matt. 4:7; Luke 4:12.

‡ This had been stated by Lignano (*De duello*, 282v).

tempt God by the fallacious proof of arms; on the contrary, he must forgive.[91]

Since the duel seemed thus to be forbidden by the Bible, some sought to explain the combat between David and Goliath. One writer noted that this occurred in a war decreed by God against the enemies of Israel.[92] According to another statement, in which dueling was compared to harlotry, both are sinful, to be sure, on the part of the participants; but duels like that of David and Goliath, which were supposed to take the place of fighting between armies, resembled harlotry also in that those who allowed these evils had some justification; harlotry was tolerated as preventing adultery, and such duels were likewise permitted in order to avoid greater evils. Still another opinion was that David and his companions were impelled not by the Holy Spirit but by natural human reason; and, if illustrious men accepted the former theory, they would claim divine inspiration even for their misdeeds.[93]

The various considerations with regard to religion were supposed to have caused the enactment of the antidueling law of Venice; but with this exception, according to a statement in a book published in 1561, duels were permitted by all the rulers of Italy.[94] These combats were regarded as possible, furthermore, even after the decree of the Council of Trent. This fact was recognized both by opponents of the duel and by at least one writer who regarded it as sometimes permissible. That duels might still take place was implied, moreover, by a statute of the Knights of St. Stephen (1590), which prescribed that, if one of their members gave or accepted a challenge, served as a second, or otherwise furthered a duel, the said member should be permanently deprived of his uniform and should be imprisoned.[95] As for the above-mentioned writer, whose book was published as late as 1596, he held that when a man could not settle a dispute by means of witnesses, arbiters, or the counsel of the ruler, and hence invoked the duel, he must fight with an energy that would reveal his resentment.[96]

Duels might take place even within the territory of the church itself. In a letter written in 1550, a certain Giulio Constantini

stated that anyone was permitted to fight a duel in the square of Sant'Apostolo at Rome.[97] Into the same city, in 1557, Prouvillan made a triumphal entry after having won his duel at the near-by Monte Rotondo; and in 1559 it was at Rome that Brantôme witnessed a duel between two Italian soldiers.* It may be significant, also, that Albergati (1583), desiring for the duel certain reforms, appealed to Ugo Buoncompagno, marquis of Vignuola, who was the commander-in-chief of the troops of the pope.[98]

The fact was that duels were still regarded with more or less favor by public opinion. One of the writers noted that honor, although it is closer to the soul than property or life, is defended not in the forum of God but in that of the world.[99] The common belief was that it is preferable even to do evil in following public opinion rather than to act rightly in opposition to it. Classic examples cited in support of deference to the majority were the conduct of Socrates and that of "the wise man of Megara": the former did not resist his death sentence although it was unjust; and the other sage, having noticed that all his fellow-citizens went unprotected in a heavy rain, did the same.[100] As for the duel, says a modern writer, never did the people value it more highly than when it was denounced by both the state and the church.[101]

Even among those who opposed the duel, there persisted old ideas concerning honor. One opinion was that, although Christians must not fight duels, yet if a man was a knight, it was perhaps permissible for him to show to the world that resenting an offense by means of the sword was a matter which he considered.[102] Zinano (1591?), for example, stating that dueling was directly opposed to his Christian faith, expressed the following conception of his duty:

He was a knight because he was a Christian; hence, if he engaged in a duel, which was prohibited by the church on pain of excommunication, he would no longer be a knight. But lest it should be thought that he might lack valor and would refuse to use his God-given strength of body and soul, he declared that

* Pp. 181, 184.

according to his custom he would pass through the city of Reggio armed as a knight, and willing rather to lose his life than to allow himself to be offended in his honor, which came from God.[103]

The Italian duel, however, before the end of the sixteenth century had temporarily ceased to exist or had become exceptional. Because of the Council of Trent, said one writer, dueling in Italy, where it had most flourished, was almost eradicated; and in the book of another (1586) it was asserted that as a result of the action of this council the duel was obsolete.[104]*

But whatever may have been the fate of the Italian duel as an institution of vital importance, some forms of it have existed down to our own time. In the minds of men, remarked one of the writers, are wonderfully entwined the roots of the solicitude for honor. If only this were regard for the honor of God, he added, courage and fortitude would produce the most splendid results, and would make men capable even of dauntless and saintly martyrdom.[105]

* In France, however, it was not until after the Council of Trent that dueling reached its climax. Francis I (1515–47) had been fond of public duels; but since in 1547 such a combat resulted in the death of one of the favorites of Henry II, Châtaigneraye, henceforth no duels received formal royal sanction. Henry even swore that he would permit no more duels at all, but he did not keep his word, for he allowed many which were theoretically "private." The French monarch who regarded duels with the greatest favor was Henry III (1574–89), who made the most celebrated fighters his favorites. Henry IV (1589–1610) commuted the punishment of seven thousand duelists, and in about this period there were killed in duels perhaps one-third of the French nobles (Gierens, 196). Near the middle of the seventeenth century, Théophile Raynaud said that within thirty years the men of rank who had been killed in duels were so numerous that they could have formed an army (*Cath. Encyc.*, V, 185).

One reason for this disregard of the action of the Council of Trent seems to have been that civil authorities prevented its antidueling decree from being published. Brantôme noted that this was true not only in France but also in England, Scotland, Flanders, and some places in Germany (Brantôme, VI, 373).

CONCLUSION

THE duel of the sixteenth century, as compared with that of former times, had certain features which some of the writers considered to be retrogressive. In the first place, there had to a great extent disappeared the spirit of chivalry which, for example, permitted a fallen duelist to rise, and a fallen or broken weapon to be replaced. By the end of the first quarter of the century, moreover, the knowledge as to what would be the arms was no longer granted to the challenger before the day of the duel; and, contrary to the previous custom, one might fight with only a sword and with no armor.

The Italian dueling-code also underwent changes about 1550. One of these seems to have been still more unjust: whereas in at least the early period of the duel the code had sought to prohibit the choice of arms to the party who had begun the quarrel, now a man could regularly become the challenged party by giving an insult of act.

But on the whole the changes showed improvement as to both common sense and ethics. One no longer attempted to render the contestants physically equal by such means as the binding of limbs, blood-letting, and blinding, and those who supervised duels ceased to concern themselves about the use of magic. It appears, moreover, that there was no prohibition against touching the boundary of the field; as for a party who went outside it, he was not beheaded, nor was there amputation of that part of his body which had thus transgressed; and there was no discussion of such questions as whether it gave greater honor to put out an opponent's eye or to cut off his nose. A duelist who was defeated, furthermore, was not required to pay all the expenses incident to the duel, and it was not customary that he should be held as a captive.

In the middle of the century, too, there were changes caused partly, perhaps, by the fact that at this time there came into

vogue books dealing specifically with the question of honor.* Their insistence that this must be personal was apparently a reason for the decline in such customs as the use of substitutes, the possession of captured duelists by means of inheritance, and the duel on horseback; one's honor must not be shared with either man or beast.

This emphasis upon honor perhaps tended to make the duel more humane, and dating also from about the middle of the century there were other influences the effect of which was greater: it was now generally agreed that the duel was totally forbidden by the law, and the decree of the Council of Trent in 1563 left no doubt of the absolute prohibition by the church. The result was that by the end of the century the duel in Italy had become, for the time being, practically extinct.

Yet even at the present time dueling is a subject of considerable interest, not only because in certain countries it still survives, but also because there remains as an institution which is world-wide that enlarged group-duel called "war."† This, moreover, as compared with the duel between individuals, has been far more deeply rooted in the history of the world; in this respect its abolition would be similar to that of slavery. War resembles the duel of honor, furthermore, in its appeal to the emotions; although the ultimate causes of strife between nations may be economic, and although some hold that victory results only from valor, skill, and force, the people in general are led to war largely by appeals to their sentiments of honor or religion. Sometimes those who are supposedly Christians, for example, seem to believe that even wars of aggression may be inspired by the same divine spirit which produced the Sermon on the Mount and that God, although perhaps no respecter of persons, regards some nation of today as his chosen people. Hence invoking for the "just" cause the blessing of a tribal god in behalf of their country, men tolerate an institution which is opposed to the highest ideals of various religions and is repugnant to the whole spirit of the teachings of Christ.

As for honor, the sentiment of the duelist is transformed into

* Bryson, 1–2. † Appen. VI.

regard for an honor which is national. For example, the spirit of the *manifesti*, etc., in negotiations concerning duels* is remarkably similar to that of the pamphlets published by various governments at the outbreak of the World War.† In these two types of propaganda, every motive of an opponent generally appears to be sinister; whereas the other party seems to have attained miraculous perfection, or to have fallen short of it only because of excessive tolerance and generosity. In sixteenth-century Italy, however, at least one of the defenders of war was more candid; he held that it is permissible for a nation to fight not only in defense of its liberty but also for its general benefit, and to subjugate those who do not deserve to be free.

But perhaps war may share the fate which has overtaken the duel; it may become largely a subject for laughter. In many parts of the world if a man should now give a challenge, he would be regarded much as if he appeared in armor and with sword and lance. Likewise it is possible that war, in so far as it is supposed to be based upon religion or honor, may yield to the satire of some future Cervantes, who would thus help to prepare a way for the Prince of Peace.

* Pp. 167, 170, 171.

† Each pamphlet bears the name of a color; from the collation of at least some of these documents one might perhaps compile a Black Book—of falsehood, whether deliberate or the result of self-deception.

APPENDIXES

APPENDIX I

THE ORIGIN OF THE DUEL

IT WAS sometimes said that the duel originated among the ancient Greeks or Romans. There was supposed to be reference to it in the *Rhetoric* of Aristotle;[1] some held that it had been invented in Greece by the Mantineans, and more specifically by one of them named Demonatte;[2] and, according to one opinion, it had its origin in the stories of Achelous and Hercules, Menelaus and Paris, and Hector and Ajax.[3]

Among the Romans, remarked some of the sixteenth-century writers, the duel was subjected to restrictions. It was generally employed only by gladiators and was regarded as infamous;[4] but it was used also by certain freemen, who fought in order to decide matters which could not be settled legally.[5] Soldiers, however, could not fight duels without the permission of their captains, and the refusal to engage in a duel was not considered dishonorable.[6] As for the gladiators, said one writer, they were servants or slaves, and were foreigners; and the Romans, he declared, never fought duels for causes that were personal, but only against enemies of their country.[7]*

The theory that duels were of Greek or Roman origin, however, met with opposition.[8] According to one statement, the duel had been approved by no ancient state, nor by Plato, Aristotle, or any other ancient philosopher or legislator.[9] Another said that the duel was unknown to Aristotle and that, although he was not a Christian, he would perhaps not have permitted it in his ideal republic.[10] As for the Romans, no laws concerning the duel had been decreed by Justinian or other emperors.[11]

One of the writers held that the duel of honor, as well as the judicial duel, was first used by the Lombards;[12] this was presumably before their invasion of Italy. But another was un-

* Maffei said that this was true also of the Greeks (Maffei, 285).

certain whether the origin was Lombard or Greek;[13] and still another held that the duel of honor, at any rate, came into existence after the Lombard kingdom had fallen.[14]

In the books of the Spaniards Sepúlveda and Urrea, it was suggested that the duel had its origin in Spain. The former writer thought that it dated from the combat between the brothers Corbis and Orsua Patrueles at New Carthage in the time of the elder Scipio Africanus (*ca.* 235–183? B.C.); the purpose of such duels was to display valor, or to decide as to the right to exercise authority. From Spain, Sepúlveda added, the custom of dueling passed into Italy and Greece.[15]

Leaving out of consideration the "state" duel, some have held, without specifying more definitely, that the institution was originally Teutonic; and, according to Saxo Grammaticus, it arose by order of Frotho (or "Frothe") III, king of Denmark. This monarch, who was supposed to have been a contemporary of Augustus,* was believed to have decreed that the sword should settle every controversy.[16]

In fact, however, the duel may have originated outside Europe. The appeal to the judgment of heaven by means of "ordeals," at any rate, has been practiced not only by the European races which have been mentioned, together with the Celts and the Slavs, but also by the ancient Egyptians and Indians and the natives of modern Africa and Australia.[17] Since in Europe one of the forms of the "ordeal" was the judicial duel, the latter may have existed also in other parts of the world.† The duel of honor, moreover, according to a statement of Marco Polo (d. 1324 or 1325), was a custom in Malabar.‡

Even before the appearance of the European romances of chivalry, with their frequent accounts of duels, a kind of code

* P. 67, n.†.

† It is supposed that it was a custom of the ancient Hebrews and that there are indications of this type of duel in the literature of India, and in the *Antigone* of Sophocles (Coelli, 3).

‡ He said that in this kingdom one sometimes insulted another by spitting in his face, whereupon the offended party asked of the king permission for a duel. The king then gave them swords and shields, and they fought until one was killed (Albergati, 214v–15).

of honor was suggested in the *Shāhnāma* of the Persian poet Firdusī (*ca.* 940–1020?). According to this, the first time a contestant was thrown to the ground his life was spared; but, if he was thrown again, his opponent was permitted to cut off his head.[18]

In short, the origin of the duel is unknown. In this connection one of the writers mentioned the killing of Abel by Cain,[19]* and another remarked that the duel was invented by the devil.[20] According to still another, the rules concerning it were derived from the laws of nature;[21] and Fausto da Longiano said that, since the duel was based upon universal public opinion, it had existed at all times and in every inhabited part of the world.[22]

* Gen.4:8.

APPENDIX II

A DUEL IN ANCIENT GREECE

AS HAS been mentioned, there were references to a duel fought by two men under the authority of Alexander the Great, an Athenian athlete and a Macedonian soldier.* A sixteenth-century account of this combat appears in Giraldi's *Ecatommiti*. The narrative is as follows:

Since the two parties were lovers of the same young woman, and she could not decide as to her preference, Alexander one day ordained that the men should determine the matter by a duel on the following day between sunrise and sunset. The arms were those which were honorable for use in war, namely, the coat of mail, the helmet, and the sword.† The dueling-field having been inclosed by a plow furrow, Alexander decreed that under penalty of being declared the loser one must not pass out of bounds.

But this was done by both parties; the Athenian stepped outside the field while attempting to pick up his sword, which had fallen because of a stunning blow dealt upon the opponent's helmet, and the Macedonian crossed the boundary in pursuit of his adversary. The weapon was regained, however, after the contestants had returned to the field.

At this point there arose a question as to knightly generosity. The Macedonian having fallen to the ground, his opponent permitted him to rise, and remarked that he wished to show more courtesy than did the Macedonian, who had sought to prevent him from recovering the sword.

* Pp. 30 [n.*], 54, 203. In Giraldi's *Dialoghi*, however, it was noted that this ancient duel was exceptional (I, 17). According to Cottereau, the name of the Athenian was "Dioxippus" and that of the Macedonian was "Corago" (Cottereau, 454).

† But in the same author's *Dialoghi* it was stated that the Athenian fought without armor and with a club, whereas his opponent used armor, a sword, and a spear (I, 17). It seems to have been believed by Speroni, moreover, that they employed whatever arms they pleased (*Del duello*, 436).

Although the Athenian afterward dealt a blow which cut in two his opponent's weapon, the duel came to an end only because of the expiration of the time limit, and victory was claimed by each party. The Macedonian declared that his opponent was the loser inasmuch as he had dropped his sword and had gone outside the field because of fear. The Athenian replied that the falling of his sword, unlike the severing of that of his opponent, was a matter of chance; that, if the Macedonian had been courageous, he would have permitted that the fallen weapon should be regained; and that, if the duel could have been prolonged, no objection would have been raised with regard to replacing the damaged sword of the Macedonian. As for going out of bounds, the Athenian noted that since the regulations for the duel did not anticipate this action by both parties, it was immaterial to consider the question as to who had crossed the boundary first; and that, whereas the offense of the Macedonian had been due to carelessness, he himself had transgressed unavoidably while attempting to recover his sword. He explained that he had sought to regain the weapon in order to save his opponent from the shame, and himself from the sorrow, which would result if, being unarmed, he should be struck by a coward. The fact that the Macedonian had returned to the field and continued to fight, the Athenian added, proved that the question of going out of bounds should be ignored.

The result of the duel was indecisive.* Since it was fought simply at the command of the king, there was no challenger; hence one could not apply the rule that, if at the end of the day neither party had conquered, the victor was the one who had been challenged.[1]

* One of the interlocutors in the author's *Dialoghi*, however, said that the duel was won by the Athenian (I, 17).

APPENDIX III

A PROPOSED DUEL IN THE THIRTEENTH CENTURY

AS TO the controversy between Charles of Anjou and Peter of Aragon, it is undisputed that on the death of the Emperor Frederick II, in 1250, his successor as king of Naples was Charles; and that after the "Sicilian Vespers" (1282), the parliament at Palermo chose Peter, and the latter seized Sicily. From this point on, the accounts vary. Some of the statements are as follows:

After certain ambassadors of Peter had failed to obtain for him the favor of the pope, who had resolved to give all possible aid to Charles, Peter sent in their stead Gismondo de Luna. The latter was met by Charles, who, after declaring to him that Peter was a treacherous usurper, said that he challenged his rival to fight a duel. When Peter had been informed of this by a letter from Gismondo, he accepted the challenge and proposed to the pope that the duel should not only decide the question as to treachery but should also determine who would rule over Sicily. King Edward I of England, who was a relative of both contestants, was asked to grant a dueling-field at Bordeaux, which was then held by the English, and it was understood that unless by special agreement the duel should not take place without the king's presence. It was also stipulated that the duelists should each be accompanied by a hundred knights.

Charles, having received the blessing of the pope,* went to Bordeaux. Peter did the same, but is said to have kept himself incognito; for he found that King Edward was not present, nor did he have any representative to guarantee a safe field.†

* But, according to one statement, which assumed that the challenge was given by Peter, Charles accepted it against the pope's advice (Gelli, *Duelli celebri*, 3).

† Villani, however, said that Edward sent a representative to act as judge (Marozzo, 119v).

Charles arrived at the dueling-place at sunrise of the appointed day, remained until nearly sunset, and went away accompanied by the judge. Shortly afterward Peter presented himself to an official at the field, asked him to take formal notice of his presence, and as further proof of it left his arms. He then departed hastily, saying that being unarmed he feared injury from the followers of Charles's nephew, Philip III of France. Each of the parties thereupon accused the other of "contumacy" and claimed the victory. Charles then issued a challenge for another day, but Peter refused it; whereupon the pope awarded Sicily to Charles.[1]

Other versions, doubtless the result of patriotic bias, appear in the book of the Frenchman Cottereau and that of the Spaniard Urrea. The former mentioned the matter briefly; he simply said that Peter was condemned because he did not appear at Bordeaux.[2] In the work of Urrea, there is the following account:

The pope, having declared that Peter's seizure of Sicily was entirely unreasonable, was reported to have permitted Charles to challenge Peter to a duel. Each gave to the pope a pledge as security that the winner should have Sicily. By agreement, both parties were to go to Bordeaux, each accompanied by one hundred gentlemen. Charles, however, asked his nephew, Philip III of France, to send five or six thousand soldiers to the outskirts of Bordeaux, in order by intimidation to prevent Peter from coming; or, if he came, to kill him.

Shortly before the appointed time, Peter dismissed his escort, went to Mount Aragon, a castle in the Pyrenees, and took to his bed as if ill. Since he purposely permitted all the knights to see him in this condition, spies carried the news of it to Charles. In the meantime, Peter had sent to Bordeaux his arms and three good horses, under the pretense that they were for sale. Two days before the date set for the duel, Peter, still feigning illness, dined in bed; of this Charles was duly informed. After dinner, Peter, accompanied by two knights dressed as merchants, departed secretly, and they rode day and night until they reached Bordeaux.

On the appointed day the dueling-field was surrounded by a great throng of spectators from various countries. Charles entered the field but soon departed. Thereupon Peter went to the inn where were his arms and horses, equipped himself, proceeded to the field, and summoned Charles three times with a loud voice. At first all thought him to be a madman who was burlesquing Peter, but at sunset he raised his visor and went before the marshal of the field, the representative of Edward I of England. Since this monarch was less powerful than the King of France, however, the marshal, fearing for Peter's safety, asked him to leave immediately. But Peter had the notary make a record of the proceedings, and then formally rode over the field. He left after the end of the dueling-day; and, according to many Italian, French, and Spanish histories, that night he rode sixty miles. So Charles lost Sicily because of not waiting at the field until sunset.[3]*

* But the pope excommunicated Peter and declared that he was no longer a king. Being therefore theoretically reduced to the rank of a simple knight, he is said to have jestingly ordered that henceforth he should be called the "Knight of Aragon" (Gelli, *Duelli celebri*, 3–4).

APPENDIX IV

THE DUEL *ALLA MACCHIA*

AN EXAMPLE of a duel *alla macchia* is a combat which took place at Naples about 1490.* One of the parties was a youth whose age was perhaps eighteen, and who was then in the service of the King of Naples; but he afterward became Ercole I, duke of Ferrara. His opponent, a man of thirty, was a Neapolitan noble, Galeozzo Pandone, count of Venafro. Of this duel a version, which may represent the actual facts, appears in Giraldi's *Ecatommiti*. Here the opponent of Ercole is called simply a knight, and his name is given as "Pandonio." This account is as follows:

Both parties were enamored of a young Neapolitan woman named Licina. She had fallen in love with Ercole, but Pandonio asked him to renounce his pretensions, and also declared that she was inconstant. Ercole thereupon gave him the lie. Since they were near the apartments of the king, they could not fight immediately, and moreover the king did not grant fields for duels. So Pandonio said that early next morning he would be outside Naples at the place where horses were trained and that they would fight on horseback, with no armor, and only with swords.

Next day at the appointed place, as soon as they saw each other, they spurred their horses and attacked without a word. In the course of the fight Pandonio dropped his sword, whereupon Ercole generously drew back and invited him to dismount and recover it.† After Pandonio had again mounted and they had exchanged many strokes, Ercole wounded his opponent twice in the head; and he would finally have killed him if some

* This duel is noted in the sixth Latin eclogue of Boiardo (d. 1494), and in Ariosto's *Orlando furioso*, Canto III, stanza 47.

† Such acts of generosity, which were discussed in connection with the formal duel, were perhaps rare in the duel *alla macchia*.

knights, who had heard of the contest, had not arrived and stopped the fight. Ercole told them that he had not sought Pandonio's life and that he was satisfied because they had seen the victory. Pandonio wished to continue the fight, but the knights would not consent. Thereupon the king, learning that Licina loved Ercole, commanded that Pandonio should leave them in peace. After Ercole had become duke of Ferrara, when Pandonio was passing through that domain Ercole sent for him, showed him great honor, and said that he was the bravest knight against whom he had ever fought.[1]

There is an account of another duel *alla macchia* which took place at Sassoferrato, apparently in 1567, and was fought between groups. Since on the whole it was the result of enmity which was factional, it partook of the nature of a "state" duel.

The origin of the dissension was a loan, by Jofo Baroni to a son of Meo Jani, of the small sum of 5 paoli (about $2\frac{1}{2}$ lire). From an ensuing dispute there arose between the families Jani and Calderani a feud which in the course of time led to the death of fourteen men and two women; the latter were both killed in a duel for which they had challenged each other.

In 1566 Girolamo Severi, known as "Tempesta," who was acting in behalf of one of the factions, wrote on August 25 and placarded on August 29 a challenge for a duel with six on each side, and he proposed that the weapons should be swords and daggers. Over eight months later, on May 10, 1567, Ottaviano Calderari ("Calderani"?), whose nickname was "Tondo," wrote, on the part of the opposing faction, a *cartello* of acceptance. In addition to his signature, there appear those of the attestors, who were Gio. Paulo Nobile, Girolamo Parmelini, and Roberto Mercurio. The tenor of the document is as follows:

Calderari accepted the proposed weapons and specified that there should be no armor and that the contest should be a fight to the finish. He had wished to contend with Severi alone; but, since others of the Calderari faction desired to participate, he accepted the proposal for a duel between groups. His associates would be his brother Menco, his cousin Prefetto, Gio. Maria Celli, Ugo di Giusto, and Captain Villano Cozzi. Since the last-

mentioned had a few months previously received a challenge from Gio. Pietro Honorio dello Staffolo, these two should be pitted against each other; and Menco desired that his opponent should be Fulgineo Olimpi. But Calderari's group would meet any six whom Severi should choose. All members of the Calderari faction had agreed to leave their interests in the hands of their six champions; and, if a similar arrangement should be made by the opposing faction, it was to be understood that the duel should not only settle the differences between the contestants but also restore peace to the whole town. Severi should reply to this proposal within twenty days and should select some spot on the outskirts of the district for a duel *alla macchia*.

According to the narrative, the combat took place on the frontier between the lands of the pope and those of the Duke della Cornia, at a place called La Selva; and, of the twelve combatants, all were killed except one. Tradition relates that Pope Pius V, having heard of the affair, anathematized this district, whereupon it suffered various misfortunes, The people's entreaties, however, caused the curse to be revoked; on the occasion of a jubilee, the pope sent a bishop or an archbishop to give to the region a formal blessing.[2]

APPENDIX V

DECISION BY LOT

THE duel was sometimes compared to casting or drawing lots. This, according to the Bible, had been the method of choosing Matthias;* and some held that just as God had revealed to Moses that the rod would put forth blossoms,† and had informed Samuel that the king should be Saul,‡ likewise in this case decision by lot was divinely inspired. Lots were cast or drawn, moreover, not only in matters which concerned religion but also in those which were secular, such as bestowing an inheritance when two or more claimants had to the deceased an equal relationship.[1]§ This procedure was considered reasonable and legitimate, at least in cases such as that of a disagreement between brothers.[2]

But divine inspiration in deciding by lot was supposed to be restricted to certain cases. The choosing of Matthias, for example, was preceded by prayer, and moreover the incident took place before Pentecost; after the apostles had received the Holy Spirit, they did not decide by lot in choosing the seven deacons.‖ The use of this method in cases which could be settled by human intelligence, furthermore, was regarded as a manner of tempting

* Acts 1:21–26. See also passages such as I Sam. 14:41–42 and Matt. 27:35.

† Num. 18:1–8. The fact of such divine inspiration was noted by Henry of Ghent (thirteenth century) (Guevara, 38).

‡ I Sam. 9:15–17.

§ Augustine had said that decision by lot was permissible under certain circumstances. In time of persecution, for example, it might be used in order to determine who should flee; and the same method was proper with regard to giving alms, if the amount available was sufficient for only one person, whereas a decision must be made among those whose need was equal. But decision by lot was denounced by Pope Leo IV (847–855). Writing to the bishops of England, he noted that this procedure, by which they decided all their problems, had been condemned by the Church Fathers, and, characterizing it as witchcraft, to those who employed it he threatened excommunication. According to Thomas Aquinas (thirteenth century), moreover, the practice was a superstitious seeking of judgment from fortune, the stars, or the devil (Terzo, 58–61).

‖ Acts 5:1–6.

God, and casting or drawing lots in order to decide matters concerning earthly vanities was condemned by the Council of Trent.[3]

Opinions differed as to the comparative merits of deciding by lot and resorting to the duel. On the one hand, the former was considered preferable because it did not cause homicide.[4] On the other hand, there was supposed to be much greater reason to leave a decision to the *virtù* which was shown in the duel, for the latter seemed to result from the natural law of self-defense.[5]

APPENDIX VI

WAR

WITH regard to war, there were several statements as to its origin. One of the writers noted that it began in heaven: before the creation of man, the first "public act" of God was the war conducted by the forces of the archangel Michael against those of Lucifer.* A further indication that the profession of the soldier exists in heaven was supposed to be implied by the remark of Christ that, if he had asked the Father, the latter would have sent to defend him more than twelve legions of angels.† The Bible also speaks of "the Lord strong and mighty," "the Lord mighty in battle," and "the Lord of hosts."[1]‡

There were various theories concerning the origin of war on the earth. Like that in heaven, said one of the writers, it was ordained by God; this was in the days when, there being no magistrates, individuals had taken the administration of justice into their own hands; and, after the appearance of magistrates and rulers, God enjoined war not only, as previously, against ordinary evildoers but also against rebels.[2] According to Muzio, the armies on earth were created in imitation of those in heaven, and for the purpose of honoring God.[3] Another opinion was that war originated in the Garden of Eden with the contest of Eve and the serpent against Adam;§ the propounder of this theory noted that, since war is waged not only with arms but also with strategy, it is not unreasonable to hold that Adam, whose sin made him subject to death, died in battle.[4] Still another view was that war originated in the first homicides.‖ Hence wars are essentially evil; but, if employed rightly, they

* Isa. 14:12; Rev. 12:7.

† Matt. 26:53.

‡ Ps. 24:8, 10.

§ Gen. 3:1–6.

‖ Viggiani specified the killing of Abel by Cain (Viggiani, 12v). At any rate, with regard to war one of the writers noted that arms existed before education (Mora, 46–47).

were thought to be like certain poisons which are beneficial when used in medicines.[5]

As for the relation between war and the duel, not only did the Latin words *bellum* and *duellum* have originally the same meaning but also, according to one of the writers, the duel had its origin in war.[6] At any rate, they possess features in common.

Some pointed out, for example, that they are alike as to their defects.* According to one opinion, man is naturally peaceable; his fighting is an "accident" and is contrary to reason.[7] Another, noting that there is little difference between a duel and a military skirmish, held that the purpose of both war and the duel is to seize by force that which ought to be obtained peaceably.[8]

The matter was treated more fully by Bernardi. Although he believed that war and the duel are substitutes for that which is worse, he admitted that they are essentially evil. He noted, moreover, that, since the failure to resent an affront is equally shameful for a state and for an individual, both war and the duel reject the civil law. As for the protection of the honor of the individual, the author explained that the law was considered inefficient; a magistrate may fail to enforce justice because he is unwilling , or because lack of proof or some other hindrance renders him powerless.† With regard to war, Bernardi held that this injures the whole state and that rulers are under special obligation to substitute appeal to the law; by this method their quarrels, as compared with those of duelists, can be settled more easily, for they generally arise neither from ignorance nor from depravity but from questions concerning the ownership of cities, etc. Both war and the duel, moreover, he regarded as methods of tempting God; as to the statement, made by opponents of the duel, that the participants by invoking divine aid sought wrongfully a miracle, he remarked that God is supposed to answer men's prayers for victory also in war. Yet Bernardi held that, since war may be just, as when it is

* Lignano had said that a duel fought in order to obtain glory is of the nature of an unjust war (*De duello*, 282).

† Bryson, 75–80.

waged in order to recover property, it is logical to believe that a man may have a just cause in a duel.[9]

Another who discussed the similarity between war and the duel was Antonio Possevino. He said that the purpose of both institutions is to aid the public welfare by obtaining justice; the duelist, for example, fights to remedy the wrong done against justice by an insult.* But the author held that both war and the duel are themselves unjust unless they are fought in self-defense and in order to bring about peace.† As for the duelist, he should seek friendly relations with men in general, by causing them to regard him as one who maintains his honor. Possevino held, moreover, with regard to both war and the duel, that, if the opponents are exactly equal, one should not use trickery. He admitted, to be sure, that equality exists rarely or never and that there is no obligation for opponents to seek it in war. Yet all agreed, he said, that even to an enemy in war one should not break a promise.[10]

Still another writer pointed out the similarity between war and the duel as to this matter of inequality. In war, for example, the opposing forces are usually unequal in number, and in the duel the weapons may differ in weight.[11]

As for the judgment of God, whether for war or for duels, some noted that the fact of divine intervention appears to be uncertain; victory may be obtained by the cause which is unjust. Examples of this were the triumphs of the Cimbri and the Goths, and evil motives sometimes directed such men as Alexander the Great and Julius Caesar; the latter, remarked Bernardi, was exceeded by none with regard to the amount of territory which he laid waste, and the number of people whom he killed unjustly.[12]

For such apparent miscarriages of justice there were suggested several possible reasons. God may foresee, for example, that victory would be misused, or he may wish to give punishment for the loser's sins. Since all things are God's, moreover, he may

* *Ibid.*, 42–43.

† As for war, Cicero (*De officiis*) had said that one must employ it in order to secure peace and safety (Castiglione, 139v).

without injustice dispose of them simply according to his will. Thus he commanded the Israelites to borrow from their masters articles of silver and gold and to carry them away from Egypt.[13]*

In spite of the admission, furthermore, that the divine judgment is uncertain, those who wage war for a cause which is just were supposed to be favored by religion. Such wars were thought to be permitted by law both human and divine.[14] As for the Bible,[15] not only are warlike characters praised in the Old Testament but also the soldier's profession is not prohibited by the Gospels. When, for example, soldiers asked John the Baptist what they ought to do, he bade them to be satisfied with their pay, etc.† Christ himself, moreover, in spite of the fact that the Romans used tax money to maintain their troops, said, "Render to Caesar the things that are Caesar's";‡ and, praising the faith of the centurion, he made no objection to the latter's military profession.[16]§ According to one of the writers, furthermore, those were mistaken who believed that a Christian cannot be a valiant soldier and that the opposition of Christianity to war caused the fall of the Roman Empire.[17]‖

War which is just, moreover, had been defended by Ambrose (d. 397) and Augustine (354–430);[18] and Sabba da Castiglione noted that the latter, although he never counseled anyone to go to war, condemned the erroneous and depraved opinion of a certain heretic, who asserted that no war in the world can be just and permissible. According to Castiglione himself, this theory had been recently resurrected from the depths of hell, by heretics who held that all the contemporary soldiers were cursed dogs of Cain with hands full of blood, and that wars are unjust and unreasonable even when fought against Turks or other unbelievers. On the contrary, Castiglione held that to wage a just war is obligatory. As an example of one who had

* Exod. 3:22, 11:2, and 12:35–36.

† Luke 3:14.

‡ Mark 12:17; Luke 20:25.

§ Matt. 8:10; Luke 7:9.

‖ According to statements in the *Monarchia* of Dante, the Romans had acquired their power by the will of God. The fact that Dante believed in the justice of their wars was noted by Maffei (Maffei, 168–69).

failed to do his duty, this writer mentioned Wenceslaus, king of Bohemia, who had caused great evil by not destroying the heretics.[19]

Yet from the point of view of ethics war was supposed to be subject to restrictions.* According to some, in order that it should be just it must be fought at the command of those in authority, be based upon a righteous cause, and have the purpose of manifesting the truth. Unless with the consent of the emperor, moreover, a ruler must not wage a war of offense. A war of defense, however, was thought to be permitted by the law of nature, which is more authoritative than the civil law, and even the latter declares that one may repel force by means of force.[20]†

But others made the general statement that it is proper to wage wars in behalf of one's country. These were naturally considered justifiable when they were defensive; and, according to one opinion, it is also permissible to conquer those who ought not to have liberty because they do not deserve it.[21]

Castiglione discussed the question how war should be regarded by a private soldier. He commits mortal sin if he is certain that the war in which he engages is contrary to the will of God, but he does not sin if he fights in a war of the justice of which he is doubtful; if in this case he is subject to the ruler who wages the war, he must always presume that the cause is just. But, if he is not this ruler's subject, and he fights without the consent of his own ruler, his participation in an unjust war is a sin, and he must therefore acknowledge it in the confessional. He is not required to restore the booty, however, which he has taken in the war; just as a harlot, who is under obligation to confess her sin, need not give back her evil gains. In all cases which remain doubtful, finally, the soldier should seek divine enlightenment through prayer.[22]

* Aristotle held that war is waged justly only when it is defensive, or in order to compel the obedience of those who from their birth are destined to live in subjection (Susio, 77). In the fourteenth century, Lignano defined a just war as one which is fought for necessary defense, or by the authority of a ruler (*De duello*, 282).

† *Vim vi repellere licet.*

In contrast with the resemblance between war and the duel, certain writers pointed out features in which they are dissimilar. Of the two, some asserted the superiority of the duel. One opinion was that a duelist should first have experience in war; for the duel implies a greater risk of one's life, and is more difficult; since it is less a matter of chance, it requires greater skill.[23] According to another, war is greatly inferior to the duel because the former results in such evils as taking hostages and booty. Caesar's invasion of Gaul, for example, was far worse than dueling for the sake of honor. So the author held that the duel as compared with war is more in harmony with both law and religion; these permit fighting for one's country, and in certain cases the defense of personal honor is still more praiseworthy. If it is true, he added, that divine law forbids the duel because of the danger of homicide, there is still greater reason for prohibiting war, even when fought for a cause which is just;* for it may bring about the death of many.[24] Still another writer said that war, although it is sometimes permissible, is ethically inferior to the duel; for in the former it is allowable to use trickery, and also suffering is inflicted upon many who are innocent.[25]

Others, however, preferred war. In the first place, they noted its practical necessity; since each nation has its own laws, and since rulers are not subject to magistrates, there is no earthly supreme authority.[26]

Some held, moreover, that war is superior to the duel from the standpoint of ethics. According to one opinion, the duel is based merely upon the suspicion that one who has been insulted lacks spirit to show resentment; whereas war, as had been pointed out by Aristotle, may be fought for a just cause.[27] So men should reserve arms and valor for use in war.[28] The latter, moreover, was indorsed by civil law and permitted by canon law, both of which prohibited the duel;[29] and one of the writers said that, since war is allowed by the Christian religion, the theories concerning this form of combat are not applicable to the duel.[30]

* In the tenth century, Reginon, abbot of Prüm, said that one who had killed another in war should do a forty-day penance (Gautier, 3, n. 3).

APPENDIX VII

CONTROVERSIES OVER PROPOSED DUELS

THE duel was often transferred to the field of controversy, where the principals and the authorities on the code of honor, acting as substitutes, fought with the pen. In order to understand why so many proposed duels never took place, and to realize to what extent the theorists were meticulous, it is necessary to consider some of these controversies with their various ramifications. The development of such quarrels may be traced in a number of documents which are extant. Of these cases it is sufficient to give four examples.

RANGONE VERSUS PICO

The first was the controversy between two counts, Uguccione Rangone and Galeotto Pico della Mirandola. The former wrote to the latter that, according to the report of a certain Nicolò Losco, Pico, asserting that Rangone bore him ill will, had said that Rangone's purpose in forbidding his soldiers, unless by his special permission, to serve as mercenaries was to prevent their aiding Pico. Rangone concluded the letter by the unconventional procedure of not only giving the lie but also issuing a challenge, and asking his opponent to procure the dueling-field. Pico, accepting the challenge on condition that his opponent should first settle other quarrels in which he was a principal, expressed the wish that the field should be procured by Rangone, since the latter was the challenger. As for the statement which had caused the challenge, Pico asserted that it was true in the form in which he had expressed it to Losco, and the latter denied that he had been quoted correctly by Rangone.

Socino and Alciato gave the opinion that there was no cause for a duel. The former held that Rangone had the right to make the decree for his own soldiers and that no one but God and himself could know whether he had done so in order to injure

Pico; but, since the latter's belief that this was the purpose was sincere, his statement was not a lie.* Alciato said that, since Rangone's decree to his soldiers was general, his prohibition of their serving as mercenaries under another lord was at any rate a lesser offense than if Rangone had specified Pico.[1]

FREGOSO VERSUS GONZAGA

The second case was that of Cesare Fregoso and Cagnino Gonzaga, both of whom were members of the order of knights of the King of France and at war under his authority. Fregoso declared that Gonzaga, writing to a third party, had reflected upon Fregoso's honor. Thereupon Fregoso, on January 2, 1537, without the permission of his general sent to Gonzaga a *cartello* which declared that as many times as he had spoken, caused to be spoken, written, or caused to be written, to the prejudice of his opponent's honor, so many times he had lied in his throat;† and that, if he denied it, he lied again.‡ Fregoso added that he would not write abusively, since this would be the action of one who was envious, malignant, and base; but he reserved the right, if his opponent did not shirk his obligations, to "speak with weapons in hand." To this Gonzaga replied, in the same month, that for the present he would ignore the introduction to Fregoso's letter, but that he accepted the challenge.

After the lapse of more than two years, Fregoso supported his cause by publishing favorable statements made by distinguished lords. The first, which appeared in April, 1539, was that of the King of France. Another was written in July of the same year by the Marquis del Vasto. He held that Fregoso's *mentita* had been valid and hence had given dishonor to Gonzaga.

For this case, moreover, as for the preceding one, opinions were given by Alciato and Socino. Both favored the cause of Gonzaga. Alciato first stated, as follows, the arguments for the opposing side:

If, as appeared from Fregoso's *cartello*, Gonzaga had accused him to a third party, this was worse than if the accusation had

* Bryson, 55–56. † *Ibid.*, 56. ‡ *Ibid.*, 62, 67.

been made to Fregoso himself. In either case, moreover, Fregoso's *mentita* would make him the challengee. He did not become the challenger, furthermore, by the mere fact of his mentioning that he reserved the right to "speak with weapons in hand," for this did not imply the question of the choice of arms. His giving the lie, also, was not conditional: he wrote as one to whom the fact that he had been offended was a certainty; and his phrase "as many times as you have spoken, etc.," referred not to the fact of the offense but to its frequency.

In spite of all this, however, Alciato believed that the party who was challenged was Gonzaga, and the same opinion was held by the Duke of Urbino and other authorities. The reasoning was as follows:

Whatever Fregoso's *cartello* might be as to its form, there was no doubt of its meaning. This could not be changed without the consent of both parties. Since the function of the challenged party was to stand on the defensive, moreover, Fregoso seemed to be the challenger because he had said, "If there be no shirking on your part." Although it had been held, furthermore, that the *attore* as to the offense was not necessarily the *attore* as to the duel,* yet in case of doubt the challenger was the party who had given an insult by the first *cartello*, unless it appeared that he himself had previously been insulted. So the challenger was the one who had disturbed the other's peace. The party who was challenged, on the other hand, was the one who was contented with his present state. But Fregoso's reference to reserving the right to "speak with weapons in hand" showed that he wished to resort to arms. He could not be "contented," moreover, because his opponent by accepting the offer to fight had placed upon him the onus, the burden of proof. It would be superfluous, also, for a challenged party to say, as did Fregoso, that he wished to "speak with weapons in hand." But since superfluity of words in *cartelli* was never to be presumed, it must be held that Fregoso had chosen to seek a decision not by the civil law but by the duel; and this choice was the function of the challenger. As for the suggestion that Fregoso's

* P. 21.

words "If you deny it, you lie again" placed the onus upon Gonzaga, the latter might have considered the conditional clause to be ambiguous: it might have meant, "If you deny that you said," "If you deny that you lied when you said," etc. Since Fregoso could have expressed himself more clearly, his opponent should have the benefit of the doubt. As for Gonzaga's failure to mention in his *cartello* that he had been given the lie, there were two explanations: in the first place, he may have considered it unsuited to his rank to use many words and, second, it was necessary only that he should show regard for his honor, and this he did by agreeing to fight. Since after choosing the duel, moreover, a man could not give part of his proof by means of the civil law, Fregoso could not prove legally that Gonzaga had assailed his honor by a letter written to a third party, and also prove in the duel that his opponent had lied: the two proofs must be simultaneous. With regard to this letter, furthermore, Fregoso was debarred from producing it in a court of law; and, if he had opened it without permission, he could not be heard concerning its contents and was liable to prosecution.

Similar reasons were stated by Socino. He held that, since there was no evidence that Gonzaga had reflected upon Fregoso's honor, the latter's giving the lie was not the resentment of an accusation, and hence his opponent had no cause to give proof. If, moreover, Fregoso had said simply, "You lie," and had not mentioned weapons, he could, to be sure, have claimed the privilege of being the challengee; but his desire to "speak with weapons in hand," and his preceding words, constituted an affront: they meant, "I will speak insults." Since, furthermore, Fregoso had allowed two years to pass without protesting against the alleged attack upon his honor, this was a case of silence giving assent. As for Gonzaga, he could have resented Fregoso's *mentita* by replying, "You lie in saying that I lie";* then Fregoso, having to prove that Gonzaga had lied, would have been compelled to be the challenger. But he was not the less so under the actual circumstances, for Gonzaga's silence was simply the middle course between assent and contradiction;

* Bryson, 70–71.

he showed prudence when he neither confessed nor denied an accusation which had not been made specific. As to the opinion of the King of France, it should not be considered; since he had not given to Gonzaga an opportunity to be heard in his own behalf, the opinion would have been invalid even if the king had been the natural lord of both parties.[2]

PIGNATELLI VERSUS PIGNATELLI

The third case, for which there are documents dating from June 30, 1547, to March 9, 1548, was that of two Neapolitans who were relatives, Cesare and Fabrizio Pignatelli. The latter was said to be a paralytic, who because of weakness and trembling could scarcely hold a weapon, and required the aid of several servants in order to mount a horse. Since, moreover, he was a treasurer or steward of the church, he was called an ecclesiastic.

At the first rumors of a cause of dissension, a message from Cesare to Fabrizio stated that the former was not offended and that the report was due only to idle gossip. Later, however, Cesare wrote to Fabrizio that the latter had caused him to be assaulted by one of Fabrizio's servants and that, if Fabrizio denied it, Cesare would prove it with arms. Fabrizio did not deny the offense, but he insisted that Cesare should describe it specifically and should give the name of the servant. Fabrizio also proposed two methods of arbitration:* either the difficulty should be settled by the emperor's representative, in whose jurisdiction were both parties, or each party should choose as arbiters two knights. These proposals Cesare refused. Thereupon a decision in his favor was given by a group of ten men of Siena, and Cesare chose a judge and a dueling-field, which was at Sarteano.

Opinions on this case were given by several authorities. Of these, Valerio Ursino and Claudio Tolomei supported the cause of Cesare. According to Ursino, it very rarely happened that *cartelli* described an offense specifically, or named a third party unless he was an instigator. If, for example, one caused a man

* *Ibid.*, 80–85.

to be kicked by a horse, the offended party in his complaint was not bound to give the horse's name. As for the name of the servant, moreover, not only did Cesare perhaps not know it but also the actual offender may have acted in the place of another to whom the assault had been intrusted. Since Cesare knew his assailant by sight, furthermore, Fabrizio should have invited Cesare to summon all the former's servants, in order that the offender might be identified. In the opinion of Tolomei, Cesare was justified in refusing the arbiters; for, since Fabrizio might have chosen those living so far away that they could not meet with the arbiters selected by his opponent, the dispute could have been prolonged indefinitely.

Alciato, on the other hand, gave an opinion in favor of Fabrizio. In the first place, Cesare, after indicating to Fabrizio a desire for peace, should have given his reason for issuing a challenge. Second, he should have specified the nature of the assault: it might have been too slight to give grounds for a duel. Third, he should have stated the name of his assailant, for the latter might himself have been eligible to fight; in the code of honor, as in law, he who had given the greater injury should be called to account first.* Fourth, Cesare had rejected both of Fabrizio's suggestions of proper methods of arbitration, whereas Fabrizio had rightly appealed to the representative of the emperor. Cesare should have agreed to try one of these methods of arbitration before submitting the matter to the ten men of Siena; and, since the latter lacked jurisdiction, their action was invalid. Finally, Fabrizio could without loss of honor refuse the duel because of his physical condition, and the fact that he was an ecclesiastic; and, if there was recourse to the dueling-law of the Emperor Frederick II, Fabrizio should be allowed to fight by substitute.[3]

CELLESI VERSUS GATTESCHI

The fourth and last case was that of two men of Pistoia who were relatives and had formerly been friends, Captain Lanfredino Cellesi and Pietro Gatteschi. Their quarrel was dis-

* *Ibid.*, 53–54.

cussed in a considerable number of documents, dating from 1559 to 1561; but, since these were all published at the instance of one of the parties, Cellesi, it is not certain that they tell the whole story.

Captain Bartolomeo Gatteschi, brother of Pietro, had owed to Cellesi thirty-seven scudi. This included about twenty-seven lire which were owed by Captain Gatteschi to Giovanni Francesco Avanzati of Florence, for which sum Cellesi had stood security. Captain Gatteschi made to Avanzati a part-payment of about eleven lire. Then when a certain Vincenzo Ferreti, sent by Cellesi, demanded payment of the thirty-seven scudi, Captain Gatteschi declared that he owed Cellesi nothing.

On October 25, 1558, Cellesi laid the matter before a court of law. Since the parties were relatives, the suit, according to the statutes of Pistoia, must be compromised. So about the middle of April, 1559, Cellesi was awarded seventeen scudi. But it was said that actually he received less, because he accepted payment in coins of too light weight.

In the courtroom Captain Gatteschi, fearing that the money might be demanded again, was not content with an ordinary receipt, but insisted upon one which should bar all future claims. To this Cellesi objected on the ground that Captain Gatteschi might owe him some other debt. Captain Gatteschi's brother, Pietro, who seems to have been also his agent or attorney, thereupon exclaimed, *Oh delle nostre!* These words, according to one of the authorities on questions of honor, Dr. Gherardo Masi, meant that Cellesi had demanded that to which he had no right, that he planned to do so again, and that Pietro considered him to be a villain. When, moreover, Cellesi said that he was a man of honor and not accustomed to demand what was not due, Pietro replied that Cellesi had asked for thirty-seven scudi, but the court allowed him only seventeen. In this connection Pietro exclaimed, *Oh vedetelo!* This expression, according to another authority, Dr. Giovanni Pavolo della Chiesa, implied that Cellesi was dishonorable. Cellesi continued to refuse, however, to give other than the ordinary receipt, and in this he was sustained by the judge.

Henceforth we lose sight of Captain Bartolomeo Gatteschi, for the insult to Cellesi had been given by the former's brother, Pietro. On the morning following the dispute in court, there occurred the incident which caused the discussion concerning a proposed duel. Pietro Gatteschi in a communication to the Duke of Florence and Siena, under date of April 23, 1559, narrated the matter as follows:

Gatteschi had gone to hear Mass at the church of the Virgin Mary of Humility. While he was there, Cellesi entered with two companions, and he and at least one of the others were armed. Approaching Gatteschi, he uttered, in substance, these words: "If you said or intended to say that I demanded more than was my due, you lied in your throat." Gatteschi, being alone and unarmed, could not leave the church; otherwise he would have resented the affront immediately. So now, in order to recover his honor and that of all his family, he asked the duke's permission to *far questione*. This, as has been noted, was an expression which in legal parlance signified a plaintiff's taking the first steps in a lawsuit.*

Somewhat different was the version of Cellesi. He said that on the occasion in question, he was, according to his custom, armed and attended by a single servant. He asked Gatteschi to step outside and speak with him. But, since Gatteschi would not listen, Cellesi, moved by anger because of the other's ingratitude for the favors shown to his brother and because of the words which Gatteschi had spoken against Cellesi's honor, gave him the lie. This, moreover, was not conditional.

The duke allowed the duel but specified that it should take place outside his jurisdiction. He also insisted that it should be fought fairly. Thereupon Gatteschi, writing from Florence on July 8, sent to Cellesi a *cartello* and copies of two other papers: one was the permission of the duke and the other granted a dueling-field in the jurisdiction of the Count of Monteauto. The original of the former document was kept by the Commissioner of Pistoia and that of the grant of the field was intrusted to a certain Captain Bati.

* P. 108.

In the *cartello* Gatteschi specified that the duel should be fought without armor; but he said that, in order to show to his opponent and to the world that he did not insist upon the choice of weapons, he allowed Cellesi to select from the regular arms of all gentlemen and honorable knights; these were the sword and cape, or the sword and dagger. The weapons were to be of the usual weight, length, and thickness, and Gatteschi was to bring them to the field for both parties. But, since choosing the field and sending to the opponent a list of arms were not ordinarily the functions of the party who had been given the lie, Gatteschi later offered the following explanation: because the award to Cellesi of only seventeen scudi, whereas he had demanded thirty-seven, showed that he was thought to have asked for more than his due, he virtually received a *mentita* from the court; and this occurred before his giving the lie to Gatteschi.

Gatteschi's *cartello* furthermore stated that, if after it had been delivered he did not receive an answer within twenty days, he would have no further obligation, and would let the world know what was the character of his opponent; and that the latter, as the party who had been given the lie, must make the next move and must give him all proper advantages. Gatteschi closed by saying that this *cartello* would be attested by a notary, Alessandro di Michele Mechi of Florence, who would give a copy of it to whoever wished it; and that Cellesi could send an answer, for Gatteschi or his representative, to the home of Mario Colonna.

Cellesi replied from Tresana on July 24. He said that Gatteschi's appeal to the duke showed that the former needed to regain his honor and that of his family. He must therefore issue a proper challenge. If he did not do so, Cellesi would let the world judge which of them most desired to keep himself in safety.

Gatteschi answered with a *cartello* from Bologna under date of August 2. He denied that either he or his family had lost honor; his reason for appealing to the duke was that Cellesi's *mentita* was apparently an unfair insult.* According to Gattes-

* Bryson, 30, 58–60.

chi, moreover, Cellesi ignored the fact that he himself had received a *mentita* from his opponent; and, as for the one which Cellesi had given, Gatteschi held that it was invalid because it was conditional and because it was given with unfair advantage.* Stating that Cellesi's refusal to choose any of the suggested weapons showed that he was merely quibbling, Gatteschi now proposed that his opponent should choose from the following methods of procedure: (1) either of the parties should select three knights from the court of the duke (preferably two of these should be the duke himself and his son, the prince), and from these the other party should choose an arbiter who should decide as to who was the challenger; (2) the arbiter so selected should not decide who was the challenger but should choose the weapons; or (3) three kinds of weapons proper for knights, and fair for both parties, should be proposed by Cellesi, and from these the choice should be made by Gatteschi. The *cartello* ended with the statement that, if within fifteen days after receiving it Cellesi did not accept any of these plans, Gatteschi would drop the matter, leaving upon his opponent the onus of having been given the lie.

Cellesi replied from Florence on August 6. Since Gatteschi had secured only one field, his opponent invited him to send the grants for two others, and said that he himself would then present such a list of arms and horses as would cause Gatteschi to fear.† Cellesi added that he had no more to say to him.

Gatteschi, still at Bologna, wrote his last *cartello* to Cellesi on August 17. He declared that he would not leave to Cellesi, but to the world, the decision as to whether it was necessary to send the grants of three fields; and he remarked that, if Cellesi still refused to accept the opinion of knights and princes, it was easy to know whether or not he was familiar with the books on honor.

To this Cellesi, writing again from Florence, replied on September 1. He said that, if Gatteschi was as well versed in the literature of the duel as he professed to be, he must have read

* *Ibid.*, 64–65.

† P. 174.

that a gentleman unburdens himself not with words but with deeds.

At this point the parties ceased communicating with each other, and there appeared upon the scene a number of authorities on the code of honor. They considered the quarrel in its several phases: these were the question of the debt and the dispute in the courtroom, the meeting in the church, Gatteschi's request to the Duke of Florence, the former's suggestions as to the arms, and all that took place subsequently.

Some of these authorities supported the cause of Gatteschi. They were Ercole II, duke of Ferrara; Vespasiano Gonzaga; Scipione Ursino; Ascanio della Corgna; Marc' Antonio Colonna, duke of Tagliacozzo and high constable of the Kingdom of Naples; and Giulio Cesarino. The sum of their statements is as follows:

Gatteschi was in the right as to the debt. So his accusation that Cellesi had claimed more money than was due was in effect a *mentita;* and, since it put the onus upon Cellesi, it made him the challenger. Hence the latter's subsequent *mentita* given to Gatteschi, being invalid,* reacted upon himself and caused his onus to be doubled.

His giving the lie was invalid also for other reasons. It was contrary to the law of knights and Christians to give an offense in church, Gatteschi was unarmed and alone, and the *mentita* was conditional; for this to be effective it was necessary that the other party should acknowledge, explicitly or tacitly, that he had made the statement of which he was accused,† and the *mentita* was not made valid by Gatteschi's subsequent assertion that if he had not been taken at a disadvantage he would have resented it.

In the communication to the Duke of Florence, furthermore, Gatteschi used correctly the expression *far questione.* It did not necessarily imply a challenge, and it was not used in connection with regular duels. That the latter fact was realized by the duke was proved by his insistence—which would have been superfluous for a duel under the code of honor—that this com-

* Bryson, 71–72. † *Ibid.*, 62.

bat should be fought fairly. So even if the words *far questione* suggested a challenge, this could have referred only to a duel *alla macchia*. In this case, since the formal rules would not be applicable, Gatteschi was not guilty of irregularity in suggesting the arms.

There were also several explanations of his asking permission to recover his honor. In order to be allowed to take whatever action was necessary, he may have sought to convince the duke that the situation was serious. It was possible that Gatteschi here committed an error; but, if so, this was only because his jealous regard for his honor made him too solicitous. He may have meant that he wished to recover his honor only if such action was necessary; and, even if he really supposed that he bore the burden of proof, this was not a fact but only his opinion.

It was proper, too, for him to suggest knights as arbiters. Since this proposal was refused, he had no further obligation.

Being thus supported by authorities, Gatteschi published at Bologna, on January 9, 1560, a *manifesto*.* In this he explained why he had asked permission to regain his honor: he had hoped that the Duke of Florence, perceiving his indignation, might grant his request more readily. Moreover, although Gatteschi had not been obliged to offer a duel, he had done so in order to give to his opponent an opportunity to vent his spleen. But since Cellesi's giving the lie had been conditional, whereas his own had been valid, he himself was the party who was challenged; hence he had the choice of the weapons and of the dueling-field. For the latter he had sent a grant which permitted either a formal duel or one *alla macchia*. In conclusion, he blamed Cellesi for having sought the opinion of outsiders rather than that of men to whose authority he was subject.

Some other statements favored Cellesi. These were given by Muzio, the Count of Monte l'Abbate, the Duke of Urbino,† the Duke of Parma and Piacenza, the Marquis of Pescara, the Duke of Sessa, Dr. Gherardo Masi of Florence, Troiano Delfini of

* Addressed *alli honorati et valorosi Lettori*.

† Muzio said that, with regard to duels in his time, Francesco Maria, duke of Urbino, was the chief authority (*Duello*, 21v).

Mantua, and Dr. Giovanni Pavolo della Chiesa of Milan. According to them, the status of the case was as follows:

With regard to the debt, Cellesi was not in the habit of receiving payment twice; there was a great difference between receiving a debt and demanding it. When he asked for the full amount, moreover, he had not been informed that Captain Gatteschi had made a part-payment to Avanzati. Besides, the legal judgment presupposed that the amount was doubtful; and, in order to reflect on Cellesi's honor, the court would have had to declare that he had demanded an excessive sum intentionally.

As for Pietro Gatteschi, he had no right to take his brother's place as a party to the dispute; and, furthermore, his words were insulting. They implied that Cellesi by demanding too much was dishonorable. This statement would have been an insult even if it had been true; for the speaker did not show that he was prompted by desire for the public welfare.*

Cellesi had acted properly, moreover, in the interview in the church. With regard to the act of taking advantage of a place where one's opponent could not show resentment, Gatteschi had anticipated him, for he had insulted Cellesi in the courtroom in the presence of the judge. Besides, Cellesi did not accost his opponent in the church until the end of the Mass. As for his having an escort and being armed, this was due to his rank; for many years he had been accompanied by a servant, and to be armed was a captain's duty. A man who intended to give a *mentita*, moreover, should neither be unarmed nor wait until he knew that there were no arms at the disposal of his opponent; in either case, one of the parties would be at the mercy of the other.† In the next place, the conversation took place with Gatteschi's assent; and also, if Cellesi had acted unfairly, his opponent would not have received a real insult;‡ hence he would not have shown in his appeal to the duke such eagerness to regain his honor.

Both his expression *far questione* and the permission granted by the duke, furthermore, indicated that Gatteschi sought to

* Bryson, 43.

† *Ibid.*, 65. ‡ *Ibid.*, 30–31.

recover honor by means of a regular duel. As for the duke, he acted knowingly, for he did not give his permission until he had received information from the Commissioner of Pistoia.

Since it was Gatteschi, moreover, who had given the first offense, and since he had chosen the duel rather than the civil law, he was the challenger. If this was not true, there was no occasion for a duel: no challenge had been given by Cellesi; and, even if he had received sufficient provocation from the fact that his opponent had virtually given him the lie in the courtroom, this was a matter entirely different from the incident in the church, which gave rise to the question of the duel.

Because the challenger, then, was Gatteschi, he should have sent to his opponent the grants for three dueling-fields, and he had no right to choose the weapons. Even if he had in mind a duel *alla macchia*, his proposal that he carry to the field weapons for both parties indicated that he sought an advantage which in such a fight was not granted to either: each brought his own weapons.

Since Gatteschi had been given the lie, furthermore, and since he had confessed that he needed to regain his honor, Cellesi was right in refusing arbitration. The use of this after a *mentita* would recognize as doubtful matters that were clear* and would thus destroy the theory of the duel.

In connection with this case of Cellesi and Gatteschi, it was noted that duels were of two kinds, the difference depending upon the question of motive. Writing in behalf of Gatteschi, Giuliano Cesarino laid down the principle that one resorted to a duel because of the obligation due to honor or because a man had treated another with contempt,† even if this was not to such an extent that a challenge was obligatory. In the former case, the challenger must observe all the punctilios of the duel, such as sending to his opponent the grants of three fields, giving him the choice of arms, etc.

As for the other type of duel, the Duke of Sessa, who favored Cellesi, held that his client was exempted from the obligation to fight if Gatteschi was moved not by the wish to recover his

* *Ibid.*, 90. † *Ibid.*, 27–29.

honor but only by hatred, the desire to display valor, etc. Since for such a duel, the duke added, either giving or accepting a challenge was blameworthy, and hence the combat ought not to be allowed, the duel permitted by the Duke of Florence was presumably for the recovery of Gatteschi's honor.*

On October 22, 1560, Cellesi, who was at Florence, issued a *manifesto*. He said that he had decided not to reply to the statements of his opponent; but he now did so because Gatteschi had been supported by the Duke of Ferrara and five other knights, and Cellesi was sure that their opinion was based on documents which his opponent had falsified. If the latter thought that his honor was unstained, moreover, he did not need to continue to write *cartelli;* and if, as he asserted, he had proved his case before a court of law, it would not have been necessary for him to challenge to a duel. His explanation (in his *manifesto* of January 9) that he had done this in order to give to his opponent an outlet for his ill will was ridiculous. But in spite of these facts, Cellesi would have accepted the challenge if his opponent had fulfilled his obligation to send the grants of three dueling-fields. Cellesi concluded with the statement that he had several times offered to make peace and that on the last occasion he had proposed the mediation of a distinguished knight.

The controversy dragged on into the year 1561. On January 11 Gatteschi, who was at Lucca, addressed "to the honorable readers" his final *manifesto*. As to the incident in the courtroom, he said that he had objected to his brother's giving a receipt which stated that Cellesi had lent him thirty-seven scudi; for part of this was not a loan but was used by Cellesi for the purchase of certain articles for Captain Bartolomeo Gatteschi, some of which the latter denied that he had received. According to the testimony of Avanzati, moreover, Cellesi knew, before he demanded the money, that Captain Gatteschi had paid Avanzati in part. As to what happened in the church, Cellesi, without allowing to his opponent an opportunity to deny the statement imputed to him, used the words, "If you said, etc."; hence the *mentita* was invalid. This it would have been, fur-

* Pp. xxiii–xxiv.

thermore, even if it had not been conditional, for Gatteschi had spoken the truth.* So Cellesi had the role of the challenger.† Finally, Gatteschi had attempted to make peace. But Cellesi, without informing his opponent, asked for the opinion of authorities on the code of honor; he rejected proposals for arbitration; and, when Gatteschi sought to meet him in a friendly conference, he went into hiding in Lunigiana in a castle of his relatives, to which one could not mount unless one were a bird or rode a hippogriff. Now Gatteschi made his last proposal: he would select one of the authorities who had supported Cellesi, and this man should decide as to who was the challenger. But there were two conditions: Cellesi must accept this offer within fifteen days and the arbiter after he should be chosen must render his decision within two months. Gatteschi also casually mentioned two new accusations against Cellesi: he had once fled in order to avoid a duel with Captain Scipione da Cagli and he had assassinated "the Cavaglier de Marsiglii." But since either of these offenses could have debarred Cellesi from a duel, and since Gatteschi gave no details, it would seem that the charges were incapable of proof.

On January 22‡ Cellesi, writing from Florence, issued his last *manifesto*. He said that Gatteschi could easily have gone to Lunigiana and that he himself, since leaving it, had traveled over all Lombardy. His final statement, in order to increase his opponent's onus, was this: as many times as Gatteschi had said, or would say, had written, or would write, that there was any defect in Cellesi's honor, so many times had Gatteschi lied, or would lie,§ in his throat.[4]

These four examples of proposed duels are typical of many. In each of the first two, one of the problems was the disclosure of the actual facts; and the alleged offense was a statement made

* Bryson, 57–58.

† Gatteschi added the curious statement that the challenge which he himself had given did not affect his status, for he had issued it because he knew that none would be given by his opponent.

‡ The date of the year, 1561, was here stated as 1560.

§ Cf. Bryson, 62–63.

not to the offended party himself but to a third party. In the first case, Rangone versus Pico, the alleged offense, being only an accusation of harboring ill will, was not necessarily a reflection upon honor, and the question as to whether the words were offensive depended largely upon the accuracy with which they were heard and reported.* In the second case, Fregoso versus Gonzaga, the offended party asserted that the insult was contained in a letter, but this document was not produced in evidence. The third case, Pignatelli versus Pignatelli, was concerned with an insult of act, and the challengee was supposed to have given it by means of a third party. There was no denial of the fact that there had been an assault; but, since the victim stated neither the details of it nor the name of the actual perpetrator, the challengee declared that the challenge was not specific. He also claimed exemption from the duel because of his physical infirmity and the fact that he was an ecclesiastic. In the fourth and last case, Cellesi versus Gatteschi, the quarrel arose from an accusation of financial dishonesty and involved the questions of insult with unfair advantage, the correct manner of giving the lie, and the proper form of *cartelli*—matters which were discussed in an attempt to solve the all-important question of who had the choice of arms.

These cases also illustrate the fact that on either side of disputed questions there was no lack of authorities. Their opinions might be influenced, moreover, by powerful lords. Muzio, for example, wrote on behalf of Gandolfino da Monde e Tassi and thereby sought to please the Duke of Ferrara; but Muzio did not know that Gandolfino's opponent, Captain Valerio Corvini, already had the case decided in his favor by the Duke of Urbino. Thus caught between two fires, Muzio reversed his opinion and published a retraction. On another occasion, about 1573, an opinion of Muzio's displeased the Duke of Savoy and perhaps prevented the former from receiving the duke's patronage.

Muzio was furthermore involved in quarrels with fellow-authorities on the code of honor. One of his opponents, who was a

* *Ibid.*, 83.

retainer of the Duke of Savoy, was Fausto da Longiano. He and Muzio had a sharp contention on the subject of dueling-weapons, and he accused Muzio of plagiarizing the work of Puteo.* Among other opponents of Muzio were Attendoli and Susio; with the latter he quarreled over a case at Padua.[5]

Such incidents show that, contrary to the assertion of some of the defenders of the duel, it did not cause quarrels to be restricted to those who were immediately concerned. Although it frequently happened that a proposed duel never took place, the negotiations concerning it sometimes created not only new grounds of dissension between the principals but also enmity among their counselors.

* As a reply, Muzio wrote his most popular work, *La Faustina* (Giaxich, 72).

APPENDIX VIII

A LIST OF ARMS

ACCORDING to Fausto da Longiano, a certain challenged party sent to his opponent the following list of arms.* It was perhaps a similar list which in the case of Cellesi versus Gatteschi was suggested as a means of inspiring fear.†

RISERBE CHE SI FANNO NEL MANDARE LA LISTA DE L'ARME, E DE CAUALLI, E DE GUERNIMENTI

Sempronio questa e la nota de l'arme, de le quali tu ti prouederai intieramente: a fine che'l di de la giornata non si consumi in far racconciarle. Altrimenti protesto contra di te' de'l tempo, che passasse per tua negliganza. Riserbandomi di potere accrescere, sminuire, bastardare, annullare, accopagnare, discompagnare, inchiodare, dischiodare tutte le sopradette cose, e di potere presentare arme, caualli, fornimenti, di potere a te medesimamente fargli presentare o tutte, o parte, come parrammi, di tutte le cose eleggere, recusare, qual me parera, e di potere armare, disarmare, te e me, montare et far montare a cauallo dismontare, e far dismontare da cauallo, cangiare arme, fornimeti, caualli a mio piacere: diporre l'arme prima elette, poi ripigliarle, tramezzarle quando mi parera, assicurandoti, che non spirera la giornata, se da te non manchera. Riserbandomi oltra le predette arme, e fornimenti, di che ti prouederai, de poterne portare anch'io de l'altre usate, e non usate cosi da offesa, come da difesa a modo mio portandone per te, e per me.

NOTA DE LE ARME

TV ti prouederai prima.

Di tutte l'arme da huomo d'arme con li pezzi doppoi.

Di tutte l'arme da giostra, cosi con la targhetta, come con la buffa, e d'un toneletto d'acciaio: due altre arme da torniamenti.

Di tutte le sorti d'arme da caual liggier, che s'usano, che siano usate, o d'a [da] alcuno portate.

Di tutte l'arme da fante a piede, che s'usano, che siano state usate, o da alcuno portate, cosi di maglia, come di ferro; e di piastre con ogni forma di celate.

D'un armature, che s'armi tutta la persona di capo a i piede di coregge di

* The text is reproduced without change of spelling, punctuation, etc.

† P. 165.

cuoio, le quali poste insieme restino a guisa di ferrata: le quali coregge sieno larghe ciascuna due punte de dita, coperte di lamette di ferro, che uengano ad essere pertugi, o vacuo de la ferrata per ogni uerso quattro dita.

D'un altra armatura di coregge simile, & a la medesima foggia coperte di maglia, de la medesima proportione, e misura.

De dui arnesi, che armino tutta la coscia co le schinere intiere, che armino tutta la gamba, con la scarpa, tutta intiera di ferro, e d'un pezzo solo.

D'un paro di calze di maglia tutte intiere.

D'una camiscia di maglia, che armi tutto'l ginocchio, con un morione, che armi tutte le guance, e barboccio fino a la ponta de'l naso.

D'un paro de maniche di maglia co le lunette, che armino tutto'l corpo dinanti fin'apresso la cintura quattro dita.

D'un giubbone di piastra di ferro con le maniche, e calze intiere tutte di piastre a'l modo simile.

D'un paro di maniche di maglia con le lunette communi.

De dui guanti di maglia, che armino solamente le chiaui de la mano.

D'un'altro paro de guanti di piastre, che armino sino a'l gombito.

De dui bracciali chiusi, lequali sieno fino a la snodatura del braccio di lame con due lunette di lame di ferro, che armino la meta de la persona dinanzi e di dietro.

D'un'armatura tutta d'un pezzo di ferro co bracciali, arnesi, schinere tutte di lame larghe tre dita: ma ciascuna di esse arme cinga detti membri a torno.

D'un paro de guanti di ferro, che armino sin'a'l gombito.

D'una corazza aperta dinazi con la braga dinanzi, e di dietro: che armino sino a mezza coscia pur di lame com'anche la corazza.

D'una mezza armatura di ferro, che armi solo la bada destra dinanzi e di dietro: laquale armature sia intiera da la cintura in su, & armi la meta de'l collo: con un bracciale destro, che armi di fuori solamente: e sia inchiodato in la detta armatura.

D'un guanto di ferro, che si chiaui ne'l detto bracciale.

D'un'arnese, e d'una schiniera da'l lato destro, che armino la coscia, e la gamba di fuori con una scarpa di cuoio coperta di maglia attaccata i essa schiniera.

D'un paro de guanti di maglia, che armino sin'al gombito.

D'una gola di maglia, ch'armi sino a la braghetta.

D'un giacco tutto di camaglio.

D'una camiscia di maglia, e di lame larghe due puta de dita di lista: laquale camiscia armi fin'a mezza gamba a quella guisa medesima.

D'un colletto di bufalo, con li scarselloni, che arruino [arrivino] a'l ginocchio.

LISTA DE LI CAVALLI, E DE LI GUERNIMENTI

TV ti prouederai d'un corsiere, d'un gianetto, d'un turco, d'un cortaldo, d'un primo piatto, d'un barbaro.

Per tutti li soprascritti caualli prouederai de l'infrascitte selle, barde, girelle, testiere, & altre armature, e fornimenti.

Di selle fatte a scudellotto, che armino di dietro una spanna commune, dinanzi fin'a l'ombelico con gli urti tutte armate di ferro.

D'altre selle pur simili, e de la medesima altezza dinanzi, ma che non sieno armate, ne habbiano arcio ne di dietro.

D'altre selle senz'arcione de dietro, che habbiano l'arcione dinanzi largo mezzo braccio, & alto fin'a la forcella de lo stomaco armate di ferro, con gl'urti larghi un palmo armati di ferro.

D'altre selle, che non habbiano l'arcione dinanzi, ne di dietro, con tre dita d'urti di ferro.

D'altre selle, a scudellotto armate di ferro come s'usa a la guerra.

De selle a la caramana, a la gianetta, a la turchesca armate di ferro.

Oltra le predette specificate ti prouederai di tutte le sorti di selle armate, disarmate, che si usano per li soprascritti caualli.

Ti prouederai ancora di tutte le sorti di staffe, che si sono usate, e che s'usano, e fra l'altre di staffe di ferro, che siano tutte d'un pezzo intiere, che coprino tutto'l piede a guisa di scarpe con quattro punte di dentro, e quattro di fuora, & una in punta lunga dua dita, lequali pungano benissimo.

Di testiere, redene, fornimenti de la medesima foggie [foggia], e larghezza di maschadizzo, ma fra l'un pedone, e l'altro sia pieno, & armato di maglia con li chiodi, come disopra medesimamente, che pongano in mezzo a'l maschadizzo, lotani [lontani] un da l'altro quattro dita. D'altre testiere, redene, fornimenti di cuoio larghi un dito grosso per trauerso con una catenella sopra di ferro, e le groppiere habbiano cinque pedoni da ogni lato coperti tutti di catenella, come di sopra.

D'ogn'altra sorte di testiere, redene, fornimenti, che si sono usati, e che s'usano cosi a la spagnuola, turchesca, francese, come a la Italiana per tutti li soprascritti caualli.

Di testiere de ferro, che armino tutta la testa de caualli dinanzi, e le guance fin'a'l collo.

D'altre testiere di lamette a guisa de corazzina, o che armino come e detto di sopra, con una punta in fronte lunga un palmo, la quale tagli, e punga.

D'altre testiere di ferro senza guace [guance] con due ponte de quattro quadri, l'una in fronte, lunga mezzo braccio, l'altra sopra le nari lunga la metade.

D'altre testiere di buffalo, che armino tutta la testa fin'a'l collo.

E d'ogn'altra sorte di testiere di ferro, che si sieno usate, e che s'usino co ogni sorte di guarda co gli occhi.

De colli, guanciali, petti, fiancaletti, girelle, che armino sino a'l garletto de'l cauallo di dietro.

Tutti di maglia.

Di lamette minute di ferro a guisa de corazzina.

Fatti a liste per trauerso larghe quattro dita di pelle di cuoio, e di maglia.

Di pelle di buffalo.

Di barbe d'acciaio.

A li morsi de i caualli tu prouederai oltra l'usate guarde, di quattro punte bene aguzze per guardia in chiodate di fuora de la guardia larghe due dita.

Mi manderai ancora la misura de la persona tua, e de tutti li toi membri d'uno in uno si de la loghezza [longhezza], come de la grossezza.*

Di Roma & c. lo carbone & c.[1]

* P. 45.

The chief purpose of such lists of arms seems to have been to display the challenged party's knowledge of their names, or to intimidate or to impoverish his opponent.* At any rate, as has been noted, the arms which would actually be used were selected from the list by the challengee, and the challenger did not know what they would be until the day of the duel.†

* After reading the list sent by Jarnac to Châtaigneraye in 1547, for their famous duel in France, the recipient remarked that his opponent wished to attack both his courage and his purse (Brantôme, VI, 287–88, 304–5; Coelli, 26, 28).

† P. 45.

APPENDIX IX

EXAMPLES OF ACTUAL DUELS*

AT NAPLES, near the beginning of the sixteenth century, a duel took place between a Spanish captain named Alonso de Sotomayor and Bayard, the knight *sans peur et sans reproche*. The former, having been the latter's prisoner of war, declared that he had been ill-treated, whereupon Bayard issued a challenge.

The field was bounded only by piles of large stones. Because the parties were knights, and especially because Bayard was ill with fever, he appeared on horseback; but Sotomayor, having the choice of arms and declaring that he was not so expert a horseman as was his opponent, demanded that they should fight on foot. The weapons were rapier and dagger, and the armor consisted of gorget and helmet. The contestants knelt in prayer, and Bayard also prostrated himself, kissed the ground, and after rising made the sign of the cross.

He then advanced to his enemy as calmly, says the narrative, as if he were in a palace dancing with the ladies. First his opponent inquired as to his purpose, and Bayard replied that he wished to defend his honor. After some fighting, Sotomayor made a thrust and missed, whereupon Bayard pierced his throat so deeply that he could not withdraw the rapier. Then the wounded man grappled with him and both fell. Bayard thereupon thrust his dagger against his opponent's face and gave him

* Most of these narratives are taken from the Frenchman Brantôme. As a devotee of dueling, he was interested in its details, and made special mention of features which were unusual or otherwise noteworthy. For the accounts of actual sixteenth-century duels in Italy, moreover, he seems to be the principal source, and of some of them there probably exist no other records; since dueling was generally regarded as illegal, Italian writers were presumably more or less deterred from narrating combats fought in their own country. Perhaps the fact that Brantôme was a foreigner also caused his discussion to be comparatively impartial. Finally, he was in Italy in the years 1557–60 and again during a period beginning with 1565, and of some of these duels he was an eyewitness.

the choice of death or surrender. But Sotomayor had already expired.

Bayard greatly regretted not having taken him alive, but he knelt and gave thanks to God and kissed the earth three times. He then took the body of his opponent from the field; surrendered it to the latter's second; and went to church, in order to express again his gratitude for divine favor.[1]*

De Chaumont (d. 1511), the representative of the King of France at Milan, granted permission for a duel at Parma, the contestants being Spaniards, Peralte and Aldano. The place was the public square. The ground was covered with snow, but this was removed from the square and heaped around it, forming a wall which was the only inclosure. The duel was fought on horseback; and, according to agreement, the saddles were provided with short stirrup leathers. For weapons, each party had a sword, a dagger, and three darts. The fight did not result fatally, and De Chaumont awarded to the contestants equal honor.[2]

There are records of several duels fought at Ferrara. These took place in the courtyard of the ducal palace and were witnessed by the duchess, the celebrated Lucrezia Borgia.† One of them was fought by two captains, Azevedo and Sainte-Croix. Permission for this combat was granted by the representative of the King of France, and he also acted as judge of the duel; this was Gaston de Foix, duke of Nemours (d. 1512). The marshal of the field was the famous Bayard.

Since Azevedo, being the challenger, did not know what would be the weapons, he appeared at the field full-armed; but there were then brought to him two swords, two daggers, and

* Brantôme added the following comments. Bayard's illness could not have excused him from fighting unless he had been confined to his bed and attended by physicians, or unless a few days before the time appointed for the duel he had been seriously wounded in battle. Sotomayor was justified, moreover, in taking advantage of Bayard's condition by choosing to fight on foot. It was worthy of note that Bayard did not exercise his right to have the body left on the field or dragged off by one of its arms or legs, with no more respect than would be shown to a dog or a piece of wood (Brantôme, VI, 263–69).

† She began to reside at the court of Ferrara in 1501, became its duchess in 1505, and died in 1519.

two helmets, and he was given the choice of one of each; there was to be no other armor. Both parties then knelt and prayed. After this the seconds searched them for hidden weapons and magic charms. When the spectators who were within the field had withdrawn to their places outside, the herald made the accustomed proclamation prohibiting them from coughing, spitting, or otherwise acting in such a way as might attract the attention of the combatants.

Azevedo held the dagger in one hand and the sword in the other, but Sainte-Croix used only his sword. The latter, having received in his thigh a blow which cut to the bone, was so weakened by loss of blood that he sank to the ground. Being summoned to surrender, he sat up and made no reply. Thereupon Azevedo, declaring that he would not strike his opponent while the latter was helpless, bade him rise. Sainte-Croix did so but, after taking two steps, fell face downward. Azevedo raised his sword to cut off his opponent's head and then paused, but still Sainte-Croix would not yield. At this juncture the duchess begged De Foix to stop the combat, but he replied that in spite of his respect for her he could not violate the laws of the duel. Sainte-Croix's second, however, now spoke for his principal the words of surrender.

The victor was escorted with the sound of trumpets to the lodging of De Foix, where he was shown great honor. But, since he had not taken with him, as was his right, the loser's arms,* these were carried away by the loser himself; and when Azevedo sent for them, Sainte-Croix refused to give them up. De Foix then notified him that if he persisted in keeping them he must return to the field, have the stitches taken out of his wound, and begin again to fight in the same condition as when the duel had been discontinued. At this threat he surrendered the arms.[3]†

Certain other duels at Ferrara were recorded more briefly.

* P. 75.

† Brantôme made these observations. De Foix's refusal to stop the fight, even at the request of the duchess, correctly followed the rule that the judge of the duel had no authority over the winner. But as for the action of the second in offering Sainte-Croix's surrender, it was doubtful whether he could do so without injuring his princi-

One of these took place on November 12, 1509: a Sicilian, Marino di San Severino (or "Marino de la Martina"), defeated a fellow-countryman, Francesco Salamone.* The latter had been one of the thirteen Italian contestants in a group duel which will be discussed later, the one fought at Barletta. On August 11, 1511, when Matteo de Piemonti fought Giovambattista Ferro, the combatants being without armor and using two-handed swords, Ferro was defeated and in danger of being killed; whereupon the fight was stopped by Lucrezia's husband, the duke. On January 30, 1513, there took place beneath the windows of Lucrezia's apartment a duel between Pirro del Calexe of Bologna and Cechino of Padua, and again the duke stopped the fight by throwing down his staff. The judges declared Cechino to be the loser and hence his opponent's prisoner, but the winner presented him to the duke.[4]†

Some duels were notable because of the victor's generosity. Besides the instance which has been mentioned in connection with the fight of Azevedo and Sainte-Croix, there was an example in a combat fought on the bridge over the Po at Turin. The contestants were two French captains: a Gascon named Cobios, and Bourdeille, who was the brother of Brantôme. Bourdeille, after wounding his opponent in the sword-hand and rendering him helpless, refused to fight further.[5]‡

Such generous conduct sometimes led to reconciliations. An example appeared in the previously mentioned duel at Rome in 1559.§ The parties had formerly been good friends. The armor consisted of morion and armpieces, and the weapons were the

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pal's honor. A further notable feature of this combat was Azevedo's generosity in not exercising his right to demand the loser's life, or to impose upon him servitude or other ignominy (Brantôme, VI, 254–61).

* Ariosto, in a letter of October 22, 1509, wrote of the quarrel which led to this duel (Catalano, *Vita di Ludovico Ariosto*, 267).

† P. 81.

‡ But Brantôme noted that some victors may have spared the opponent's life for such reasons as these: they did not know how to kill him; they lacked spirit; they wished to avoid injury to themselves; they were in haste to have their own wounds dressed; or they feared God, the law, the opponent's relatives, or his ghost (Brantôme, VI, 376).

§ P. 130. This combat was witnessed by Brantôme (VI, 284–85).

dagger and the sword. After one of the fighters had been stabbed in the thigh, had lost his dagger, and was helpless, his opponent said that he would treat him not as an enemy but as his old comrade-in-arms. The seconds thereupon stopped the fight, and the opponents renewed their friendship.[6] Another reconciliation followed a duel between two captains in Piedmont. One of these after seriously wounding the other refrained from killing him. Since it would be easier to effect a reconciliation if the public thought that the honors had been even, the loser wished it to appear that wounds had been received by both. So at his request the winner bandaged his own arm and smeared it with the blood of his opponent. The result was that they became close friends.[7]

There is record of a case in which after the reconciliation the wounds which had been received in the duel resulted in death.* The fight took place a short time after the above-mentioned duel at Rome in 1559, and the parties were Corsican soldiers. The weapon was the sword, and the armor was a vest of mail and a morion, to the front of which was fixed a short dagger; for the party who had the choice of arms was the weaker, and hence wished to prevent grappling. But as to this he was unsuccessful: he was seized and borne to the ground under his opponent. The latter, however, received from the fall a broken arm. Then the daggers inflicted upon both parties severe wounds in the face, neck, and arms. At length the seconds stopped the fight, it was declared a draw, and the result was a reconciliation, but one of the contestants had been wounded so severely that he died a month later. The survivor was thereby much grieved.[8]

Some duels had features that were more extraordinary, as when old men by means of a ruse defeated youths. On one occasion the elder duelist shouted to the other that just behind the latter's feet there was a dog. This was untrue; and, when the young man turned to look, his opponent knocked him down and forced him to surrender.[9] A similar incident, although narrated in a *novella*, may have actually occurred. According to

* Here again, Brantôme was a spectator (VI, 285–86).

the story, an old fencing-master, Pirro, had denied the statement of a former pupil, a youth named Sergesto, that the latter had defeated him at fencing. The young man thereupon challenged him to a duel and selected a field at Benevento. Pirro chose arms similar to those used at the fencing-school; they fought without armor and with swords. Not wishing to take the young man's life, the fencing-master in the course of the duel maneuvered so that they approached the side of the field where Sergesto had at his back Pirro's son, who was one of the spectators; the old man shouted to him that he should not wound Sergesto; and, when the latter looked behind him, his opponent struck him back of the knee with the flat of his sword, pushed him to the ground, took away his weapon, and seized him by the throat. Sergesto then yielded.[10]

There are also narratives which are still more remarkable. On the occasion of a duel at Naples, for example, the challenged party, trusting to his enemy's good faith, went to the field alone; and won three successive duels, in which he killed his challenger and two of the latter's friends who wished to avenge him.[11] Another story is that of a duel at Milan: a certain valiant man, who was known only as "Count Claudio," in an isolated place came upon four men who were preparing to fight, two on each side; when he tried to prevent the duel, they all attacked him; and he was thereupon forced to kill three of them and to wound seriously the fourth.[12]

The combats mentioned so far appear to have been true "duels of honor," in that their causes were presumably personal; but there were other fights due more or less to patriotism, and hence partaking of the nature of "state" duels. A contest of this kind took place in 1513, when the Spaniards were besieging the army of the Venetians, which was in Padua. From beneath the walls a Spanish captain, Jerónimo de Valencia, had insulted the defenders; whereupon one of the latter, Domenico Colliva, went out of the city in order to fight him. The arms were sword and shield. After the Spaniard had been wounded mortally, he declared himself conquered, praised the victor, and wished to embrace him and to give him his arms and his horse.[13]

Of a similar nature was the combat in 1557 at Monte Rotondo, near Rome.* The parties, both of whom were captains, were a Gascon named Prouvillan and an Italian in the service of the King of France. The former had given provocation by asserting that all the Italians were boors. In the fight he received behind the knee a sword wound which caused his defeat, but the Italian spared his life. Carrying in his coach the loser's weapons, the winner entered Rome, while his followers shouted, "Victory! Victory! The country's honor is saved." This caused some persons to laugh, since they held that a duel could not maintain the honor of a whole nation. After the victor was within the city, he went to church to give thanks to God.[14]

Some of the combats due to patriotism were fought by groups. In February, 1503, a celebrated duel of this kind took place near Barletta. This town, in the possession of the Spaniards, was besieged by the French. In the Spanish army were many Italians, under the leadership of Prospero Colonna. A French captain, La Motte, was captured in a sortie by Diego Mendoza and was taken to Barletta. While he and other French prisoners were dining with their captor, La Motte said that the Italians were cowards and breakers of their word and that he and other Frenchmen were ready to maintain this statement by means of arms. That same evening the matter having been reported to the soldiers of Colonna, they decided to send to La Motte two knights, Gianni Capoccio and Gianni Bracalone, who, if the insult should not be withdrawn, should challenge as many Frenchmen as would be willing to fight against an equal number of Italians. The French commander at first opposed the duel but finally gave his permission.

The contestants were thirteen French knights under La Motte and as many Italian ones under Ettore Fieramosca. The field was near Quarato, halfway between Barletta and the camp of the French. The judges were Prospero Colonna and the celebrated Bayard.

The duel was fought according to all the requirements of the code of knighthood. The first attack was made by the French. These, after the combat had lasted six hours, fell into disorder;

* P. 130.

so that some of them were unhorsed and captured, and others were driven from the field. Among the defeated was La Motte, who had been unhorsed by Fieramosca. Of the party of the latter, the misfortune of being forced out of bounds was incurred by only two.

So the victory was awarded to the Italians. They returned with their prisoners to Barletta, where they were received in triumph by the Spaniards and the citizens, with the salute of artillery and the ringing of bells. The Spanish commander, Gonzalo de Córdoba, conferred upon the victors hereditary decorations of nobility. Fieramosca's family fiefs were confirmed, and he was created Count of Miglionico and Lord of Aquara. On the site of the contest there was erected a stone monument.* As for the prisoners, they were freed on payment of the sum which had been agreed upon as ransom, namely, a hundred gold ducats.[15]†

In 1509 a duel of this kind took place outside the walls of Padua. The troops of the Emperor Maximilian I were besieging the city, which was in the possession of the Venetians. Three Spanish foot soldiers of Maximilian's army offered to fight an equal number of the enemy. The Venetian commander, Liviano, thereupon selected three out of the many who wished to accept the challenge. The chosen group went out of the city, killed one of their opponents, and wounded and captured the other two. The victory was celebrated by the Venetians with much festivity.[16]

On March 12, 1529, a duel which is said to have originated in jealousy with regard to a lady, but which was a contest of four young men who represented two hostile factions, took place out-

* This was destroyed by the French in 1805, but was re-erected by the Italians in 1846 (*Encic. ital.*, VI, 199).

† According to another version of this duel, the opponents of the French were Germans (*Grande encyc.*, V, 935). The same combat, moreover, may have been that which appears in a narrative by Brantôme. He said that during the reign of Louis XII of France (1498–1515), when his army was at Naples, thirteen Frenchmen fought an equal number of Spaniards; and the latter, who were the challengers, killed most of their opponents' horses. But the account differs from that given above, with regard to the role of Bayard. According to Brantôme, this knight was one of the duelists, and his prowess and that of another of the Frenchmen caused the honors of the fight to be even. Brantôme also noted that the duel occurred later than the one between Bayard and Sotomayor (Brantôme, VI, 263–69, 310–11).

side the walls of Florence. This city was besieged by the troops of the Emperor Charles V, which were under the command of the Prince of Orange, and the opposing general was Malatesta Baglione. Owing to quarrels in Florence, some of its inhabitants, who were of the faction of the Medici, were in the army of the besiegers. One of these enemies to their own people, Giovanni Bandini, received a *cartello* from a soldier who was within the city, Lodovico Martelli. The former accepted the challenge and suggested that each party should select a companion to fight with him. This was done; Martelli's fellow-duelist was Dante da Castiglione, and Bandini's was Albertino Aldobrandi (or "Aldobardi"). The Prince of Orange granted a safe-conduct and a dueling-field. The latter was inclosed by ropes and was guarded by infantrymen, consisting of equal numbers of Germans, Spaniards, and Italians. The armor of the contestants was only an iron gauntlet on the right arm, and the weapon was the sword.

In the first assault Castiglione, who by chance fought against Aldobrandi, received a severe wound; but he then grasped his sword with both hands, and struck his opponent in the mouth and killed him.* The victor's companion, Martelli, however, was conquered: his opponent, Bandini, wounded him in the forehead and gave him a thrust in the ribs which made him surrender. He was then borne into the city, where he died. It was thought that his death resulted not so much from his wounds as from grief over his defeat. The two victors in this duel, one on each side, seemed to have gained equal honor.†

Some have said that this was the last of the Italian duels which were conducted with official pomp. If such was the case, thenceforth these combats were supposed to be "private."[17]

* Because of this exploit, Stefano Colonna after Florence was captured saved Castiglione from the vengeance of the Medici (*Nuova encic. ital.*, V, 1280).

† The foregoing narrative is chiefly that of Giovio. The account by Brantôme, however, shows variations as to the parties' names: Castiglione is "Castellan"; Bandini, "Bombin"; and Albertino Aldobardi (or "Aldobrandi"), "Bertinello Ballandin." Brantôme also noted two features not mentioned by Giovio: according to custom, Castiglione, who had defeated his opponent, was not permitted to aid his own fellow-fighter; and Martelli, after being wounded mortally, at first insisted that his surrender should be made not to his opponent but to the latter's commander (Brantôme, VI, 252–54, 260–61). Baldo, however, had said that one could not surrender in this manner without the consent of the winner (Marozzo, 115).

APPENDIX X

THE DUEL IN POETRY

IN SIXTEENTH-CENTURY Italian poetry, the duel was sometimes treated in lyrics. Ariosto, for example, wrote a sonnet in praise of a soldier of Ferrara, Rosso della Malvasia, who in a duel fought in the Kingdom of Naples had killed a Spaniard of the Duke of Ferrara's guards, Francisco Caera, and hence on his return to Ferrara received many honors.[1]

But the nature of the subject decreed that the literary type in which the duel most frequently appeared should be the epic. Some of these poems narrated actual duels of the sixteenth century, but the greater number were fictions.

To the former class belong two works in Latin: Marco Girolamo Vida's account* of the group duel at Barletta† and the narrative by a poet of Romagna, Publio Francesco Modesti, of a combat‡ between cousins, Ugo Pepoli of Bologna and Guido Rangone of Modena.§

Since Modesti wrote the poem only a few months after the duel,‖ his account, with due allowance for poetical exaggeration, might be considered reasonably accurate; but, since two other productions of his, published with this work, were a friendly letter to Rangone and some verses to another member of the same family, he was presumably not impartial. This is further indicated by two prose narratives of the same duel: one by Dalle Tuate and the other by a chronicler of Bologna, Alamanno di Achille Bianchetti.

* "XIII pugilum certamen ad Balthassarem Castaleonem" in *Frammento di un poemetto inedito*, ed. Luigi Cagnoti (Milan, 1818).

† Pp. 184–85.

‡ Modesti noted the report that this duel also had been narrated by Vida (Albini, 144).

§ Perhaps the latter was the man of this name to whom was dedicated the book of Marozzo. This was published at Modena, the home of the Guido Rangone of the poem.

‖ The date of publication was 1521.

The quarrel seems to have been due to hostility between factions. Pepoli's uncle, Gherardo, was in the service of the family D'Este at the time when Rangone was commander of the troops of Pope Julius II. The latter attacked the D'Este because they were allied with the French. Rangone, famous throughout all Italy, said that Pepoli, who was very young, provoked the duel for the glory of opposing such a celebrity.

The first negotiations took place the year after the death of Pope Julius. On February 14, 1514, Pepoli sent the challenge; and on March 25, Rangone wrote his reply. This was delivered by the herald of Pope Leo X's brother, Giuliano de' Medici, on April 4. In this letter Rangone stated that he would not take advantage of his right to refuse an unreasonable challenge, the Duke of Milan had granted him a dueling-field, the combat would take place on May 21, and it would be fought on horseback. As for the arms, for both himself and his opponent, Rangone said that he would take to the field those which he had chosen. The Duke of Milan, however, after a correspondence with the pope, who opposed the duel, withdrew the grant of the field.

But on December 31, 1516, the fight took place at Gazzuolo, a castle of the Gonzaga in the district of Mantua. The field, which had been chosen by Pepoli,* was square, each side was of the length of four throws of a lance, and the barrier was a wooden fence. Near this, within the field and on opposite sides of it, were two splendid tents. These, which were snow white except for stripes of purple, served as the combatants' dressing-rooms. One of the tents faced eastward, and the other to the west: the former was for the use of Rangone; the other, for Pepoli. On a high platform sat two illustrious warriors, who were the judges. Beyond the inclosure, on two opposite sides, there were places for the spectators. Among these sat members of the families Gonzaga and D'Este, and Baldassare Castiglione, the author of *Il Cortegiano*.† There was present a group of mili-

* But, according to Bianchetti, the choice was made by Rangone.

† He had completed it at the beginning of this year 1516 but re-worked it before its publication in 1528.

tary leaders, moreover, surrounded by a double row of servants, who bore gilded swords and wore garments of bright colors. Since the country was no longer in a state of war, the duel was witnessed also by a number of ladies and gentlemen who, although now residing in Italy, were citizens of France. These, since their nation had been aided by Pepoli's uncle, were partisans of the nephew.

The duelists, wearing cloaks embroidered with purple and gold, arrived on horseback, dismounted, and approached each other in order that Rangone might prescribe the arms* and the rules. Unlike the original duel proposed in 1514, this one was to be fought on foot. The weapon was the sword; and there was no defensive armor except a cloak,† and on the left arm a bronze gauntlet. The fight was to be to the finish.

The contestants were hatless, and Pepoli, in order to prevent his long hair from fluttering before his eyes, wore on his head a net made of gold thread.‡ But Rangone told his opponent to imitate him by cutting the hair, or else to gather it into a knot. Pepoli thereupon threw the net away, in order that he and his opponent might fight on equal terms.

After they had retired to their tents and made the necessary preparations, they went out upon the field. The herald then proclaimed that, under penalty of death, the spectators must keep silent. Two famous soldiers inspected the swords and gave them to the combatants with words of encouragement.

The better fighter was Rangone, but he had a worthy opponent. The rapidly revolving swords appeared as if they were a thousand, and their flashing dazzled and terrified the specta-

* Bianchetti, however, said that, for some reason which he did not know, the choice of arms was exercised by Pepoli. But, according to Modesti, this choice was obtained by Rangone, as the result of drawing lots (Albini, 150, 154)—a method which does not appear to be mentioned in the sixteenth-century tractates. Fausto da Longiano, too, stated that the choice was made by Rangone, the party who was challenged (*Discorso*, 9).

† According to Fausto, Rangone chose that they should fight without armor (*Discorso*, 9).

‡ Bianchetti remarked that Pepoli thus covered his head because he was entirely bald. As for this net see the *scuffia* or *cuffia* of Ariosto's *Orlando furioso*, XXXIII, stanza 79 (Albini, 155–56).

tors. Pepoli defended himself cautiously. Rangone, who was much the quicker, with a stroke downward cut his opponent's cheek between the nose and the beard, and then withdrew to a safe position. His antagonist, although he was "drinking a foaming sea of blood," now took the offensive, but Rangone continued to wound him. Pepoli in the meantime was scanning his adversary from head to foot, and at last he made a feint at the head and struck at the side; but Rangone avoided the blow, rushed forward, and made a thrust. When the spectators who were at Pepoli's back saw the weapon projecting under his armpit, they thought that he was killed, but he had leaped aside so that the sword pierced only his cloak. Both duelists now drew back and, after a short pause, resumed the fight.

It ended with honor for both parties. Rangone's weapon was red with blood. Pepoli, summoning all his strength, lifted his blade for a supreme effort; but at this point Mars interposed his lance, and the sword was shattered into a thousand pieces. Pepoli thereupon called for another, and the request was supported by his opponent, who said that it was shameful to injure one who was unarmed.* But Mars, satisfied with the valor of both, stopped the fight, and Victory gave the palm to Rangone.† By this time the anger of the fighters had cooled, and the spectators departed in joyful humor.[2]

Another actual sixteenth-century duel, also at Gazzuolo, and commemorated in a poem by Vitale Papazzoni, was a fight on

* But, according to Bianchetti, it had been agreed that a broken sword should not be replaced (Albini, 154).

† The narrative of Bianchetti, on the other hand, does not show such partisanship. Although with regard to the broken sword he repeated the incident of the generosity of Rangone, he mentioned also an example of the fortitude of Pepoli. According to this account, soon after the beginning of the fight both parties were slightly wounded, Pepoli in the face and Rangone in the throat; and when the former's sword broke, and Rangone immediately drew back and told his opponent to take another weapon, Pepoli refused. Finally, after a good hour of fighting without further wounds, some lords and other gentlemen entered the field and induced the duelists to make peace. But, since neither of them wished to go out first, the lords caused them to step from the field at exactly the same moment.

As for the account by Dalle Tuate, it was decidedly favorable to Pepoli. According to this version, Pepoli pursued his opponent; and, had it not been for the intercession of the lords and ladies, would have killed him (Albini, 162–63).

horseback between Camillo Forno and Lanfranco Fontana. The narrative is as follows:

The poet and his companions departed from Venice in a pouring rain on November 20, 1558. On the third day thereafter they reached Gazzuolo. A certain innkeeper sent his son to meet them and ask for their patronage. They thereupon went to the inn, where the host by crowding his household accommodated the guests very well. For their horses, he provided a good stable and abundance of straw and feed.

The fame of the impending contest brought together as spectators twenty thousand men and women. Knights and ladies, arriving from time to time up to the day of the duel, came from many places, one of which was more than two hundred miles distant and another over three hundred. The two contestants, each accompanied by a troop of armed knights, came on the day before the fight; and, while they made their preparations, the lord of the place showed them great courtesy. Soon after their arrival, the seconds drew up the regulations for the duel.

Next morning at daybreak each of the duelists went to a church to hear Mass, which was celebrated in his behalf. Kneeling, they raised their hands, turned their palms upward, and prayed for victory: each asked that the penance which he owed for his sins might be postponed, declared that he was forced to combat in defense of the right, and added that his victory would be more precious to him if it should not cause the death of his opponent.

The procession at the dueling-field began with the slow and stately entrance of many knights. The attendants next led in, one by one, several sorts of beautiful war horses, excited by the sounds of trumpets and drums. Then coming from church immediately after the Mass, appeared the duelists. Accompanied by their seconds and "confidants," they approached the field with long, slow, and proud strides and quickly leaped within.* Their garments of silk embroidered with gold made a

* If there was no barrier, perhaps they avoided stepping on the boundary line, for fear of being bewitched (p. 42).

very splendid display, and in every movement the combatants revealed such firmness that they would have frightened Mars. Passing through the field, they went to their pavilions.

After this a group of great lords, marching to the sound of martial music, received from Fontana, and carried to his opponent, the equipment which should constitute the latter's armor. This consisted chiefly of a light cuirass, beautifully decorated with gold, and armlets, gauntlets, and armor for the right leg; the left one was to be unprotected. Upon the head, moreover, there should be only a cap. Forno agreed to the use of all these articles; but, when he was offered a certain kind of armor for the throat and chin, he raised the objection that this was not employed in war.* Since the ensuing dispute was prolonged until sunset, by an agreement which had been made for such emergencies the fight was postponed until the next day.

The following morning, the judge having decided that the armor in question was proper, there was another procession of the horses and the bearers of the arms. Since Forno did not object to the fact that the body of his opponent's charger was covered with mail and its head was protected by steel plates, Forno's own horse was provided similarly. As for weapons, there were four swords, which shone like silver; two of them were put into the custody of the judge of the duel, who would allow one to each contestant if the weapon with which he was first provided should be broken.

When the bold fighters had mounted their fiery steeds and were ready to strike, the herald proclaimed that the field should be vacated by the spectators. He then thrice sounded his trumpet, and at the third blast the contestants, swift as birds on the wing, rushed together. Their prowess was so great as to astonish the motionless spectators, and the struggle lasted a long while; since both were very skilful, they seemed to avoid injury. At last, however, one received a slight blow on the head, and the other was struck in the face. A number of great lords thereupon entered the field, went between the fighters, and tried to make peace; but, being unsuccessful, they slowly

* Cf. pp. 50–52.

withdrew. The combatants again sought with thrusts and slashes to find some spot which was vulnerable, but after a quarter of an hour they paused in order to rest their panting horses.

The contestants having resumed the fight, each showed himself to be not only brave but also generous. When one of Forno's shoulder pieces had come loose, his opponent allowed him to have it fastened; and, when afterward Fontana's sword proved to be defective, but the judge refused to allow him another, at Forno's request the decision was reversed.

Since it was now apparent that the contestants were equal in courtesy and in valor, and all the spectators wished that there should be no further injuries, the Duke of Mantua left his seat in order to intervene; and, being joined by other lords who supported his efforts, with much difficulty he induced the duelists to oblige him by making peace. This they signified by simultaneously holding up their hands. They thereupon dismounted and went out together, the knights and the ladies gave thanks to God, and there were music and festivity until all had departed.[3]

The conclusion of each of these two duels shows to what extent the contestants were meticulous. When Pepoli and Rangone left the field, and when Fontana and Forno indicated the end of their duel by raising their hands, the parties acted simultaneously. Thus neither made peace first; hence neither lost honor.

These poems reveal to some extent the code of honor of the sixteenth century, and there are intimations of it in the epic works of fiction. But the latter seem to have been influenced less by the treatises on this subject than by those on the art of using weapons,* a matter which received but little attention from the authorities on the duel.

* Both of these classes of writings were known to Tasso; of such works there are extant two copies which contain his marginal annotations: one of the book of Marozzo and the other of Camillo Agrippa's *Trattato di scientia d'arme* (Rome, 1553). On the subject of using weapons, says a modern writer, the highest point of art is attained in Cantos VI and XIX of Tasso's *Gerusalemme liberata* (Cougnet, *La Scienza dell'armi*, pp. v, 2, 11).

Among the features in which these epics suggest not the sixteenth century but the Middle Ages is the question of the challenge. In Il Cieco's *Mambriano*, for example, in accordance with the old custom Orlando sent to Pinagoro a glove; and in Dolce's *Palmerino*, each of the opponents in order to pledge himself to fight gave a glove to the sultan.[4] Also traditional was the emphasis placed upon the immunity of the messenger by whom the challenge was delivered. Thus in Dolce's *Orlando*, the challenged hero listened to the messenger willingly and gave him presents.[5] With regard to the actual duel of the sixteenth century, on the other hand, it has been noted that the custom of posting the *cartello* in public places arose because the messenger was sometimes mistreated.* By the speeches of some of the messengers in the epics, moreover, it seems that the tolerance of the listeners must have been put to a severe test. In Alamanni's *Gyrone*, for example, the messenger, having asserted that he who speaks the truth can boldly say what he pleases, told Diodenasso that one so cowardly and base as he was ought not to remain alive; that his conduct was shameful in the eyes of good men, a disgrace to noble blood, and an evil magnet which attracted all deadly vices; and that, according to every true soldier, no one surpassed Diodenasso in villainy.[6] Again, in Brusantino's *Angelica innamorata*, when a herald from the King of Tartary took to Budapest a challenge to the Christians, he showed his contempt by giving no salutation; and haughtily declared that, if the challenge should be refused, this would indicate great cowardice.[7]

Another divergence from the sixteenth-century code of honor was the fact that the duelists in the epics were not always meticulous as to the nature of the weapons. It is obvious, in the first place, that the combatants might use whatever arms were at hand if, as happened frequently, their meeting was a matter of chance. In Ariosto's *Orlando furioso*, moreover, Mandricardo had taken an oath to use no sword until he captured that of Orlando; so, after they had fought with lances until these broke, they used the fragments as clubs, and then resorted to their

* Pp. 8–9.

fists.[8]* In the same poem, Rinaldo and Roggero used battle-axes, a feature considered worthy of note in the discussion of the dueling-code in the sixteenth century.[9] In Alamanni's *Gyrone*, Phebo, considering his opponent, the giant, too base and evil to die by the sword, choked him, pulled out his tongue a span's length, and killed him by striking him on the head with his fist.[10] In Dolce's *Orlando*, the fight between Almonte and Charlemagne was, in view of the latter's rank, still more undignified: since Almonte's sword was superior to that of his opponent, the latter ran behind him and tore away his shield; and they grappled and fell, with Charlemagne on top. Then their positions were reversed, but the emperor held his opponent by the throat. Thus they remained for more than an hour, until the arrival and assistance of Orlando gave the victory to Charlemagne.[11]†

Even when the characters in the epics used the sword, furthermore, they sometimes wielded it in a manner not mentioned in the sixteenth-century code; that is, by striking with the hilt. In Alamanni's *Gyrone,* Danaino, who fought with another man because the latter had taken possession of a lady's greyhound, stunned his opponent, removed the latter's helmet, and beat him with the hilt of his sword until he surrendered the dog.[12] In Dolce's *Primaleone*, the marquis, in a combat with Belcaro, yielded after his opponent's sword-hilt had knocked off his helmet.[13] In the same poet's *Orlando*, the hero, in combat with the pagan King Troiano, used the hilt of his sword to crush his enemy's head.[14]

On the other hand, certain features of the duels described in these epics received considerable attention from the sixteenth-century theorists. With regard to the common provocation for a challenge, the *mentita*, in Brusantino's *Angelica innamorata* appears the formula, "If you said or will say otherwise, you lied and will lie."[15]‡ As for the question who should choose the

* Orlando also jerked the bridle off his opponent's horse, which then ran away.

† At first, however, Orlando would not help Charlemagne, for he thought that the latter would thereby be insulted.

‡ Bryson, 62–63.

dueling-field, the answer was given in Dolce's *Orlando:* the choice pertained to the party who was challenged.[16] Still another matter mentioned in connection with the duels in the epics was the custom of using substitutes. Thus in Dolce's *Orlando*, the hero became the substitute of Charlemagne because the latter could honorably refuse to fight against Oliviero.[17] In the same poet's *Palmerino*, however, there was noted a decision to the contrary: Amarano had asked whether his opponent, Palmerino, was of royal blood, and had declared that if this was not the case the duel would be improper; but the sultan held that Palmerino was equal to anybody because one must consider nothing except a soldier's valor.[18] The epics were much concerned, furthermore, with the use of magic. In Dolce's *Orlando*, for example, Gallaciella suspected that Roggero carried an enchanted lance.[19] There were also cases in which one charm was opposed by another: in Il Cieco's *Mambriano*, Grandonio's helmet, although enchanted, could not resist Orlando's magic sword;[20] and in Ariosto's *Orlando furioso*, the hero and one of his antagonists each bore a charmed life.[21] The epics, moreover, unlike the books of the theorists, seem not to have condemned the use of magic as essentially wrong.

These poems also reveal a general resemblance to the sixteenth-century tractates in the matter of the appearance of the dueling-field, and of the procedure immediately before the combat. In Dolce's *Palmerino*, when, in defense of a lady accused of murder, the hero of the poem fought a duel with Amarano, the field was guarded by ten thousand knights; and the sultan, his daughter, and the lords looked on from a great platform.[22] In the same poem, a duel which resulted from an accusation of treason was fought by two groups in the public square, which was guarded by a thousand knights. The contestants entered richly armed but bareheaded. After there had been assigned to them their places, the authorities commanded the spectators not to speak or make any signal. Then at a gesture from the king, the fighters, with poised lances, urged forward their horses.[23] With regard to the spectators, Il Cieco's *Mambriano* depicts what may be regarded as a bit of sixteenth-century local color: on the

occasion of the duel between Orlando and Pinagora, the spectators rested their cheeks upon their hands, while they studied the written terms of the agreement under which the duel was fought.[24]

There was recognition, moreover, of the fact that the loser of a duel might become his opponent's captive. In Dolce's *Orlando*, Rinaldo, in challenging Gerardo, said that the latter when defeated must be the former's vassal and servant and must honor and revere him all his life.[25]

A further topic which was treated in the code of the sixteenth century was in the epics given much consideration; this was the question of the conduct of the duelist as to fairness, courtesy, and generosity. In the first place, the poems sometimes emphasized these qualities by noting their absence. In Il Cieco's *Mambriano*, for example, Archimbaldo carried to the field a powder finer than white flour and composed of sulphur and lime; this he threw into the eyes of Rinaldo and of his horse, Baiardo, causing them great pain.[26] On another occasion in the same poem, Rinaldo replied to a discourteous knight with words that were insulting;[27] and in Dolce's *Orlando*, Fieramonte in challenging the hero called him discourteous and base.[28]

So fairness and generosity were not always obligatory. In Il Cieco's *Mambriano* there appears no criticism of the fact that Leonido, in a duel with Astolfo, bore upon his helmet a metal peacock, which reflected the rays of the sun into his opponent's eyes.[29]* In Tasso's *Gerusalemme liberata*, after the breaking of Argante's sword, Raimondo hesitated as to whether he should allow another.[30]

Even an apparent act of generosity, moreover, was sometimes employed to express contempt. In Dolce's *Orlando*, Roggero, having defeated and captured Almonte, set him free on the ground that he was too base to be the former's prisoner; and the victor, although allowing his opponent to keep his sword, characterized him as better suited for the distaff and the spindle.[31]

Generosity, furthermore, was not always mutual. Dolce's *Orlando* narrates a duel in which the hero used a lance without

* P. 48.

the iron point, and struck lightly with the flat of his sword; but Oliviero, his opponent, used a regular lance, and when his sword was broken he hurled at Orlando the hilt, and asked that the weapon be replaced. To this request Orlando consented.[32]

But, in spite of such cases as have been mentioned, the generosity of the epic heroes generally surpassed the requirements of the theorists and the actual practice in the sixteenth century. Orlando's use of a lance without the iron point, for example, appears not only in the above-noted passage from Dolce but also in the account of the duel with Pinagora in Il Cieco's *Mambriano*.[33] In the latter book, moreover, when Grandonio was unhorsed and badly injured, Orlando spared his life;[34] and in the same poem Rinaldo, having conquered another knight, set him free and allowed him to retain his arms on condition that he should in turn liberate his own captives.[35]

Other instances occur in Ariosto's *Orlando furioso*. One of the writers praised this epic for the many cases in which its heroes, even in combats against barbarians, did not use unfair advantage or resort to other acts unworthy of knights.[36] Their generosity was sometimes still more notable: Bradamante, after overcoming Serpentine and Grandonio, restored to them their horses;[37] when Dudone, in a duel with Roggero, saw that the latter had no lance, he threw away his own;[38] and Guido asked that there be given to Marphisa, his opponent, the better of the two spears.[39] Guido was equaled in courtesy, moreover, by an opponent in another duel, Rinaldo. When the former's wounded horse had fallen, Rinaldo offered another; and, although Guido, refusing the offer, expressed his willingness that his opponent should continue to fight on horseback, Rinaldo dismounted.[40]

There are further examples in Alamanni's *Gyrone*. Danaino on one occasion dismounted because his opponent was on foot.[41] As for Gyrone himself, the poet noted that, when a certain opponent who was a good knight had fallen with his horse and was stunned, the hero would as soon have taken his own life as to have killed him.[42] At another time, when an opponent drove his sword so deeply into Gyrone's shield that he could not with-

draw it, the hero himself returned it to him. Gyrone sometimes met opponents, moreover, as courteous as himself: one of them, after having remarked that God alone could know how their duel would result, hastened to add that he had not meant to reflect upon Gyrone's prowess;[43] and at the beginning of another duel, the fact that Gyrone was weary from a previous combat caused his opponent, Phebo, to propose that they begin their fight with the sword, and thus omit the lance. But Gyrone replied that since their agreement was honorable, his violation of regular custom would give him shame.[44]

A number of cases of courtesy and generosity appear in the epics of Dolce. In *Sacripante*, the wizard, having fallen from his horse while fighting the giant, said that the latter would greatly err if he did not permit him to remount; whereupon the giant, although he was supposed to despise all honor, was courteous enough to grant the request.[45] In *Primaleone*, when the unhorsed party was Belcaro, Arnedo asked him to remount in order that they might decide the contest only by means of arms and valor.[46] In *Orlando*, when King Balante's son, having been unhorsed by Namo, and confessing himself to be the latter's prisoner, requested that his opponent should out of courtesy exchange with him two or three more strokes, Namo agreed and allowed him to remount.[47] In the same poem, in a duel between Orlando and Rinaldo, generous conduct was mutual: each party reversed his lance so as to thrust with the wooden shaft, and each also struck with the flat of his sword.[48] Instances of generosity appear in the conduct of still another character of the poem, Roggero. After he had unhorsed Gallaciella (disguised as a man), her suspicion that his lance was enchanted caused him to exchange lances with her;[49] when attacking the courteous King Salatiello, he reversed his lance; and both in this duel and in that with Maldachino, after having unhorsed and overcome his opponent he set him free.[50]

Knightly chivalry was illustrated also by the conduct of Tancredi in Tasso's *Gerusalemme liberata*. Since in the duel with Rambaldo, and in that with the disguised Clorinda, these par-

ties were on foot, Tancredi dismounted;[51] and when, in his fight with Argante, he saw that the latter had no shield, he threw away his own.[52]

Another feature in which the epics were more exacting than some, at least, of the sixteenth-century tractates was the objection to killing or wounding an opponent's horse. In Ariosto's *Orlando furioso*, in the duel between Roggero and Mandricardo, neither party would so offend, not because of any agreement but because striking an opponent's horse was an ineffaceable stain upon knighthood. The enmity between the opponents, remarked the poet, was not the fault of the horses.[53] In Dolce's *Primaleone*, when Lecefino, having been felled by Rifarano, rose and cut off the head of his opponent's horse, Rifarano characterized this act as treachery;[54] and in this same poem a marquis, who had been unhorsed by Belcaro, and had thereupon killed the horse of the latter, received from his opponent a rebuke.[55] In *Orlando*, moreover, Dolce remarked that the giant who killed the horse of Milone did not realize that this was a great misdeed.[56]

An extensive account of a duel appears in the poem of Oliviero, *La Alamanna*. This combat was a "state" duel, in that the quarrel was not personal but was a matter of patriotism. Since there is a reference to the Battle of Pavia (1525), and since one of the characters of the poem is the Emperor Charles V (abdicated in 1555), the period of the action was about the second quarter of the sixteenth century. The narrative is as follows:

The emperor, supported by forces of Italians and Spaniards, was opposed by an army of Germans. One of the latter, Trasonio, desiring to prove by a duel that a previous defeat of his party had been due to trickery, received from his commander permission to send a *cartello* which challenged any one of the enemy. The emperor accepted on behalf of his army, and each of his captains and lords wished to be its champion. The choice fell upon Bellimarte of Seville.

Next morning Charles and the German commander swore a truce for that day, and then the duelists were given their arms.

The fight was to be on horseback, and the weapons were the lance and the sword. Bellimarte received his equipment from the hands of several nobles: one of them presented the horse; another provided the duelist with a cuirass, armlets, and greaves; the Duke of Alva placed upon his head a helmet, adorned with purple plumes; and the emperor himself girded him with a gold-handled sword, which had been taken from Francis I of France at the Battle of Pavia. Charles then spoke words of encouragement to his champion and engaged in prayer. Bellimarte, escorted by the Duke Farnese and many other lords, went out to meet his opponent. The latter appeared with his commander and the Duke of Saxony. The sound of trumpets was the signal for the beginning of the combat.

At the clash of the lances, Bellimarte burst his opponent's cuirass, Trasonio struck his adversary in the face and knocked off his helmet, and both lances were broken. The contestants thereupon attacked with the swords.

At this point, they indulged in recriminations. Bellimarte said that the Germans were less accustomed to fight than to stay indoors and drink. Trasonio replied that his opponent's parents, being natives of the Spanish deserts, were insignificant; whereas Trasonio was born in Franconia of the family of Conrad, which had produced great dukes and emperors. With regard to this conversation, the poet remarked that, since God gives strength and valor, it is not proper for fighters to engage in so much talk: this is suitable for angry women, who scatter over the neighborhood all kinds of abusive words, whether true or false.

The earth trembled, and the woods and the mountains resounded with the stamping of the horses and the clashing of the blows; and from the latter, which fell faster than the movement of an eyelid, there shot thousands of sparks. Bellimarte, having lost his helmet, sought to protect himself with his sword and his arm, but he received upon his head a blow which bathed him in blood. He seized his sword with both hands, however, and dealt upon his opponent's head a stroke which stunned him, causing him to drop the reins. When Trasonio's horse thereupon tried

to flee from the field, he fell with his rider. The latter then rose and withdrew behind one of the stakes by which the field was inclosed; whereupon Bellimarte dismounted, saying that, although his opponent had taken advantage of the loss of the helmet, yet he himself would not remain on horseback while the other was on foot. But he added that, since he had made his opponent touch the boundary of the field, Trasonio was by rights his prisoner. Bellimarte then dealt blows which burst his opponent's helmet, and he would doubtless have killed him if the sword had not broken.

Trasonio, declaring that his touching the boundary had been the fault of his horse, said that it would now be seen whether he was rightly a prisoner. He thereupon sought to strike his opponent's throat, but Bellimarte stepped to the side so that he was wounded only slightly. He then deprived Trasonio of his sword, threw it outside the field, and clamped his arm around his opponent's neck. Since Trasonio's broken helmet was now strangling him, Bellimarte was on the point of dragging him into the group of the soldiers of Charles, but the helmet fell off and Trasonio was released. He thereupon ran this way and that, seeking to escape, but he was hemmed in by the spectators and pursued by his enemy. The two fighters thus circled the field three times. Then, since Bellimarte had become weakened, his opponent seized him and attempted to throw him to the ground. In the struggle they stumbled over the handle of Bellimarte's broken sword and fell, with Trasonio on top. But Bellimarte seized his opponent's dagger, stabbed him several times in the back beneath his cuirass, and so killed him. The conclusion of the poet is that bad luck is often overcome by force and a just cause.[57]

Since the period of the action of the poem was in the sixteenth century, one might expect that the narrative would show considerable influence from the contemporary dueling-code. In fact, the code was suggested by Bellimarte's assertion that his opponent, having touched the boundary of the field, should become his prisoner; but there was no attempt to have this right enforced, for it was not based upon an agreement. On the whole,

moreover, the procedure in this combat had little resemblance to that of the sixteenth-century actual duel. Since, for example, the contestants represented opposing armies, there were lacking the punctilios as to time and place: the duel occurred on the day after the challenge, and the field lay between the camps. There is no mention, furthermore, of the presence of a judge. When in the course of the contest, also, Trasonio had been forced to fight on foot, Bellimarte's generosity in dismounting, although his opponent had failed to show consideration to him, suggests romantic tradition.

Yet in the sixteenth century there were writers who sought to apply the code of honor of their own time even to duels, actual or fictitious, of the ancients, such as that of the Athenian athlete and the Macedonian soldier in the days of Alexander the Great,* and that of Aeneas and Turnus in Virgil's *Aeneid*. As for the latter, one opinion was that Aeneas should not have killed his opponent after the breaking of the victim's sword. But another writer defended this act on the ground that the combat was exceptional: it was fought not simply because of anger but also in order to decide as to the possession of a woman and a kingdom. He held, moreover, that even if the above-mentioned criticism was valid, one should not presume to find fault with Virgil.[58] According to still another opinion, the death of Turnus was a matter of destiny.[59] One of the writers, furthermore, remarked that in this case killing the loser after he had surrendered was not an act of resentment for wounded honor, but was vengeance for the death of Pallas.[60]

In the seventeenth century there was discussion as to whether the code of honor had been correctly observed in Tasso's *Gerusalemme conquistata*. With regard to the duel between Argante and Tancredi in Book VII, the following criticisms were made by Olevano:†

Since Argante had violated the security of the field, Tancredi should have refused to fight. The cessation of the duel at sun-

* Appen. II.

† The present writer has not consulted the work of Olevano; this statement of his opinions is given on the authority of Birago.

set, moreover, should have been regarded as final; it was not proper to demand its resumption on the following day. With regard to the reconciliation, Argante, who had regained his honor by wounding Tancredi, should therefore have spoken first; as for the principle that the first speaker should be he who had first given offense,* this was applicable only when the offenses on both sides had been equal. It was also unnecessary for Argante to ask Tancredi's pardon.[61]†

Some of these statements were answered by one who had been Tasso's friend, Birago. According to him, the fact that Tancredi engaged in the combat was no violation of the code of honor, for this duel was fought *alla macchia*. If he had refused it, moreover, still Argante would have attacked him. With regard to Argante's breach of faith, Tancredi did not have proof; so, if he had made this accusation, Argante would have given him the lie and thus caused him to become the challenger. As for the reconciliation, Argante had fought not because of having been insulted but in order to show that he exceeded all Christians in valor, and this cause could not be supplanted by another. Since giving a greater offense, furthermore, blotted out the stain received from a lesser one,‡ in making peace the party to speak first should be he whose insult had been the greater. In the present case, therefore, since the parties were equal with regard to the fact that each had wounded the other, it was proper that he should speak first who had given many insults, namely, Tancredi. But it was necessary that Argante should ask his pardon.[62]

Birago himself, however, criticized from the point of view of the code of honor certain episodes in Book VI of the same poem. He held that Rinaldo's offer of a sword to one to whom he had given the lie was superfluous and that Solimano was imprudent in presenting himself as the *attore*.

In the eighteenth century Maffei, with regard to the duels in the epics of both Tasso and Ariosto, rejected the principle of

* Bryson, 102.

† *Ibid.*, 84. ‡ *Ibid.*, 50.

judging them by the standards of theorists. He noted, for example, that characters in the poems did not observe the primary maxim that each of the parties to a duel should strive to be the one who was challenged. On the whole, Maffei concluded, in these works the accounts of the duels consist of features which were traditional.[63]

So the Italian epics were scarcely influenced by the actual code of honor of the sixteenth century. Although they were concerned largely with duels, these were generally treated in accordance with the literary traditions of the Middle Ages.

APPENDIX XI

THE DUEL AFTER THE SIXTEENTH CENTURY

AFTER the sixteenth century, the books on the code of honor were inferior to their predecessors, the authority of which the later writers accepted unreservedly; but the subject continued to evoke keen interest.* In Manzoni's *I promessi sposi*, one of the characters voiced opinions which presumably were current in the period 1628–31. Of the books which have been cited in the present study, he praised those of Puteo, Fausto da Longiano, Muzio, Urrea, Albergati, Romei, and *Il Forno* of Tasso. At the end of the seventeenth century, moreover, although one was not supposed to resort to duels, yet in every quarrel which arose between knights it was considered necessary to make a clear distinction between the *attore* and the *reo*.[1]

In the early part of the eighteenth century there appeared the work of the writer by whom the code of honor was most successfully attacked: this was Maffei. He is said to have accomplished more with his pen than did the princes with laws, and the popes with anathemas.[2] But he generally noted only the features which were obviously open to ridicule. As an alternative for the duel, moreover, he advocated as noble and glorious the profession of the soldier; he held that the false fortitude which appeared in the duel would seem ridiculous if those who possessed the innate spirit of combat would employ true valor in war for the public welfare.

These strictures of Maffei were due to the fact that in his time the theories of the code of honor were still widely disseminated. He said that, beginning with Puteo (1471?), the number of authors who had discussed it was above fifty; that, at the period when he himself was writing, the interest in this subject was more intense than ever before; and that the material

* Bryson, 72, n. 7.

which was being printed concerning it formed a greater mass than did the works of Augustine. So in the production of such books the eighteenth century bade fair to exceed the past. One of those who had begun to write in this field was the famous scholar Muratori. There was enthusiasm also for the works which had been written on the duel in the sixteenth century. Maffei said that they were underlined, annotated, and transcribed and were so expensive that the sellers kept them separate from other works as if they were precious jewels. For example, high prices were paid for *La Faustina* of Muzio; the works of Fausto da Longiano, Bernardi, and Urrea; and a certain edition of Ariosto, because a few lines of it were entitled "Pareri in duello."

The code of honor was also put into actual practice. For quarrels one made use of its terminology, such as *attore*, *reo*, *provare*, and *sostenere;* and sometimes dissensions between nobles still resulted in challenges. Maffei said that every day there appeared men who wished to give proof by means of the sword.

But he thought that this attitude was due simply to idleness, which could be overcome if the nobles were educated and devoted their energy to war, and he looked to the future with hope. Although he expected that his attack upon the code of honor would be opposed by the common people, and perhaps also by some of the more intelligent, he believed that men would cease to discuss honor as treated by the books of the theorists and would remember these works only as subjects for laughter.[3]

Actual Italian duels, moreover, as compared with those of the sixteenth century, seem to have been rare. In connection with this subject, Bellincini, whose book was published a year after that of Maffei, said that, by clearing away the fog of blind and ignorant centuries, the present age had become purified; justice was now administered in the courts of law, and valor was used in defense of prince, country, justice, and especially religion and God.[4]

In the middle of the same century, however, in at least some countries, apparently the duel was more or less in vogue. One evidence of this is the fact that in 1752 it was anathematized by

Pope Benedict XIV. Invoking the previous ecclesiastical prohibitions, both the early ones against the judicial duel and those which had been promulgated since the time of Julius II, he ordained that one killed in a duel, even if before dying he had confessed and received absolution, should be deprived of church burial, and the penalty could not be removed by dispensation from a bishop. But this rule has now been modified.

In the nineteenth century, on October 12, 1869, a decree against the duel was issued by Pope Pius IX. In this he threatened to excommunicate the contestants, those who offered or accepted challenges, those who furthered the combat by any aid or favor, those who permitted it or failed to do all in their power to prevent it, and those who attended it as spectators.[5]

The antidueling law of the church at the present time has been stated as follows:

> Duellum privatum definitur certamen singulare inter duos vel paucos, susceptum ex privata causa et auctoritate privata, praecedenter condictis loco, tempore, armis letalibus. Hic non est sermo de duello publico sc. ex publica auctoritate suscepto, quod licebit si fiat ad bonum commune, ex. gr. ad bellum finiendum, ad servandam penes hostes aestimationem vel ne exercitus animo concidat. Duellum erit sollemne vel simplex, prout fit accedentibus testibus vel his exclusis.
>
> Malitia duelli duplex est, suicidii et homicidii, quia utriusque periculum continet. Provocare ad duellum grave est; acceptare est item graviter illicitum, nisi quum duellum ex altera parte mutatur in iniustam vitae aggressionem et quum provocans minitatur actualem inevitabilem aggressionem in bona fortunae; quo in utroque casu licebit et pugnare et in locum tutiorem etiam secedere.
>
> Ex CIC. can. 2351, 1°, incurrunt excommunicationem R. P. simpliciter reservatam (*a*) duellum (proprie dictum) perpetrantes; (*b*) provocantes ad duellum et illud acceptantes, etiamsi duellum non sequatur; (*c*) complices et qualemcumque operam vel favorem praebentes (mandantes sc., consulentes efficaciter, conscribentes et ferentes provocatorium libellum, patrini, ii qui locum concedunt), effectu tamen secuto; (*d*) de industria spectantes, sc. qui ex conventione vel ita accedunt ut quodammodo animum duellantibus addant: exceptis igitur iis qui, casu transeuntes, ex curiositate adspiciunt, vel clam et a longinquo spectant, vel adsunt ut duellum impediant; (*e*) permittentes aut, quantum in se est, non prohibentes, dignitatis etiam regalis et imperialis.
>
> Praeterea duellantes (*a*) ex can. 1240, 1°, privantur sepultura ecclesiastica, si moriantur in loco conflictus vel alibi ex vulnere in duello accepto, praeterquam si dederint ante mortem aliqua poenitentiae signa; (*b*) ex can. 2351, 2°, incurrunt ipsi et patrini, quos vocant, infamiam iuris.[6]

APPENDIX XII

THE DUEL AT THE END OF THE NINETEENTH CENTURY

AS COMPARED with the duels of the sixteenth century, those in Italy in recent times have been infrequent. Yet, in spite of their prohibition by both the secular law and the church, they are sometimes obligatory according to the code of honor of the officers of the army;* and the interest in the subject is indicated by the fact that the compilation of the code, made by Signor Gelli, has passed through many editions. In another work, moreover, published in 1886, the same author discussed the contemporary duel as follows:

In the first place, dueling is restricted by the requirements as to a contestant's age. The minimum is ordinarily that at which he is summoned to service in the army; but, even if he is younger, he is eligible for duels if he is married. The maximum age is fifty-five.

A challenge must not be accepted, moreover, if given by one who has already taken the case to law. The latter procedure is advisable if the challenge has been refused previously;† and a challenger may have recourse to the law even after the duel has been fought, provided that the insult which caused it was an accusation of dishonesty. In this case, the function of the law is to decide as to one's integrity, whereas the purpose of the duel is to demonstrate courage.

The insults which may lead to duels are given by any acts, words, writings, drawings, etc., which offend pride and injure

* The number of duels in the Italian army during a decade shortly before the World War has been stated as follows: in the year 1901, sixty; in 1902, fifty-six; in 1903, fifty-seven; in 1904, fifty-four; in 1905, fifty-one; in 1906, thirty-five; in 1907, twenty-nine; in 1908, twenty-nine; in 1909, fourteen; and in 1910, thirteen (*Encic. universal ilustrada*, XVIII, Part II, 2366).

† At any rate, those whose challenges have been refused should state this fact in the newspapers (Gelli, *Il Duello*, 80).

reputation. Such offenses are of three degrees: simple, grave, and *very* grave, the last-mentioned implying an insult of act.* For the simple offense satisfaction may ordinarily be given by means of the mediation of arbiters.† The grave insult consists in denying a man's courage, veracity, or good breeding; or in offending his immediate relatives, such as his parents, his brother, his sister, or his wife.‡ The *very* grave insult is the infliction of a blow or a wound, or other act which causes the offended party to become an object of public contempt. A movement by which this act is threatened, moreover, such as raising the hand to strike, is as great an insult as would be the act itself.§

With regard to the question who is the challenger, there remains a situation which existed in the sixteenth century: he is not always the party who was the aggressor. In case insults are mutual, for example, some hold that a man becomes the challenger, and hence does not have the choice of arms, if he gives a grave offense in return for one which was simple, but he is not the challenger if the original insult was grave. Yet even if he gives an insult in reply, he is the challenger if the offense which he received was an act, and hence was *very* grave.

There are certain cases in which the decision as to who should give the challenge is more difficult. Sometimes one determines the matter by lot. This may be done if a man has replied to a simple discourtesy by giving an insult, and each party considers himself to be offended; or if an offense has been given to more than one individual, and it is not clear who should resent it. But ordinarily if one has given to several persons offenses which are of the same degree, resentment should be made by the one who has been offended first; and, if the insults have not been equal, the challenge is given by the man who has been offended most seriously. At any rate, a challenge must be refused if it is offered in the name of more than one; or if, as a means of seeking revenge, it is given by a relative or friend of a man whom the challenged party has defeated in a fair duel.

A quarrel may involve more than two parties also when the

* Bryson, 39–40.
† *Ibid.*, 80–85.
‡ *Ibid.*, 42.
§ *Ibid.*, 41.

situation noted above is reversed; one man may be insulted by two or more acting jointly. In this case, any one of the offenders may be chosen as the challengee by the party who has been insulted.*

The time of preparation for the duel is brief. After the offended party has learned of the insult, his challenge must usually be sent within twenty-four hours, and an equal period is allowed for the reply. The seconds (*padrini*) should be chosen within two days. After they have conferred with the principals, the duel must take place within twenty-four hours.

As for that part of the preparation which consists in cultivating a proper state of mind, there is a marked difference from the custom of the old days. The author did not state that the contestants attend church and seek strength of soul through prayer; he recommended that shortly before the combat they invite their seconds to dinner, in order that the duelists may be cheered by an atmosphere of conviviality. He made no reference to their confessing sins to a priest, and he warned them against having at the dinner one who is to officiate at the field as surgeon: his seriousness might counteract the others' gaiety, and his mere presence could evoke dismal forebodings.

The author noted certain details with regard to the ride to the dueling-field, in case the vehicle is a carriage: the duelist should occupy a seat in the rear; if he is right-handed, he should place himself at his second's left; and, if he is left-handed, he should sit at the second's right. But he need not follow this procedure if he travels by railway.

When the parties have entered the field, which they must do within ten or fifteen minutes after the time designated for the beginning of the duel, it is not permissible for them to make peace by means of apologies. Such belated attempts at reconciliation are intolerable even if they are made by men who have often shown courage. So, if an apology is offered on the field, it must be refused; and, for the party who receives the refusal, it would be a thousand times better to be killed.

In the course of the negotiations, there has been a decision as

* Cf. *ibid.*, 53–54.

to weapons. The regular ones are rapiers, sabers, or pistols. But the choice is practically unrestricted: by agreement the parties may use carbines, daggers, etc.—even poison or dynamite; or for a duel with pistols, only one of these may be loaded, the contestants not knowing which weapon is harmless.*

For a combat with firearms, the procedure varies somewhat according to whether the weapons are pistols or carbines. If they are the former, the parties must agree as to how far apart they shall stand; this may be even less than twelve meters. But if the weapons are carbines, the distance is not less than sixty paces; and if it has been agreed that after receiving the signal to begin the duel the parties shall approach each other, the number of paces in the initial distance is a hundred. As for the method of attack, the parties fire at will, or the question who shall fire first has been determined by lot.

Whether with pistol, saber, or other weapon, the parties may, if they so desire, fight on horseback. In this case there must be horses also for the seconds. The distance between the points at which the principals are stationed is twenty-five paces. At a given signal they ride toward each other; and, if the duel is with pistols or carbines, the two contestants fire at will.

In contrast with this freedom as to the choice of weapons and the method of fighting, there are strict requirements with regard to the combatants' clothing. The seconds must make sure that this is correct; when the duelist appears at the field, it is de rigueur that he shall wear an English frock coat and a high hat. As for the trousers, it shall have been determined by previous agreement whether they shall be supported by a belt or by suspenders.

Sometimes, as in the case of exceptional duels in the sixteenth century, the combat is not a fight to the finish but ends when one of the parties is wounded. With regard to this, Signor Gelli remarked that, although the duel is founded on the principle that tarnished honor is cleansed by blood, the theorists have

* The last-mentioned procedure seems to be the so-called "American duel." Baron Levi has suggested that if recourse to arms is unavoidable, this method of dueling is perhaps to be preferred (Levi and Gelli, Preface, p. xliii).

forgotten to determine the necessary quantity; and he characterized as ridiculous and deplorable the custom of stopping the fight because one has inflicted a wound whether great or small, as if, in order to obtain complete satisfaction, it were sufficient to shed only one drop.[1]

The various details which have been mentioned indicate that the present code of honor differs considerably from that of the sixteenth century. Insults of act are now unquestionably more serious than those of word.* Men can appeal to both the duel and the law. Since the time which elapses between the insult and the duel is shorter, there is less opportunity for reconciliation. The display of courage, which was formerly regarded as a means to obtain justice, is now an end in itself. In the old days the duel was supposed to reveal the will of God; today the combatants put their trust only in courage and skill, or their god is Chance.

* But with regard to the fact that one offended by an insult of act becomes the challenger, and hence does not have the choice of arms, the situation is the same as it usually was in the sixteenth century. At that time, however, there was a suggestion of means by which a man who had received such an affront might become the challengee (Bryson, 40, 58).

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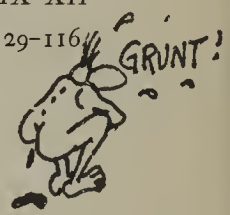
1. Maffei, 74, 262; Manzoni, chap. xxvii.
2. Giaxich, 50; Gelli, *Duelli celebri*, 16.
3. Maffei, 74, 184–85, 263–64, 452–54 ff., 499–500.
4. Bellincini, 4.
5. Gierens, 308, 312.
6. Sebastiani, 186–88.

APPENDIX XII

1. Gelli, *Il Duello*, 29–116.



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Writers in the sixteenth century often cited authorities of former times. The ones mentioned most frequently, it appears, were three men of the fourteenth century: Bartolo da Sassoferrato, Lignano, and Baldo degli Ubaldi. Of the work of at least one of them, Lignano, there were a number of editions in the sixteenth century; and the same is true of a writer of the fifteenth century, Puteo. The book of the latter, moreover, was first published so near the beginning of the sixteenth century, and seems to have been so influential, that it is here treated as one of the primary sources.

Among the writers in the sixteenth century, furthermore, are included two Frenchmen, Cottereau and Brantôme; and four Spaniards—Castillo, Sepúlveda, Guevara, and Urrea. Castillo, whose opinions concerning dueling were sometimes noted by the Italians, was professor of canon law at Turin, and Urrea was viceroy of Apulia. The books of some of these foreigners, moreover, were published in Italy, some were translated into the language of that country, and in the discussion of the duel none of them seem to present features which are noticeably un-Italian.

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